(33,759)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 450

MORRIS & COMPANY ET AL., PETITIONERS,

vs.

SKANDINAVIA INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 21, 1928

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

PLEAS AND PROCEEDINGS had and done at an adjourned term of the District Court of the United States for the Southern Division of the Southern District of Mississippi, on September 9, 1927, that being the time and place designated in said order of adjournment.

Present and Presiding the Hon. E. R. Holmes, United States District Judge.

Among the proceedings had and done were the following, to wit:

3 CAPTION.

The State of Mississippi,
Harrison County.

BE IT REMEMBERED that a regular term of the Circuit Court of Harrison County, Mississippi, was begun and held at and in the Court-house of said County and State, in the city of Gulfport, in said County and State, on the second Monday of October, A. D. 1925, being the 12th. day of October, A. D. 1925, the same being the time and place designated by law for holding said term of said Court.

There were present and in attendance upon said Court the Honorable W. A. White, Judge of the Second Judicial Circuit Court District of the State of Mississippi, herein solely presiding; B. F. Duckworth, Sheriff of said Harrison County, Mississippi; A. J. Ramsay, Clerk of said Court; and Robert L. Murphy, Official Court Stenographer for said Circuit Court District.

October Term, 1925.
October 12, 1925.

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4 DECLARATION.

IN CIRCUIT COURT, OCTOBER TERM, 1925.

State of Mississippi,
Harrison County,

MORRIS & COMPANY, A CORPORATION,
Plaintiff,

versus No. ....

SKANDINAVIA INSURANCE COMPANY, LTD., A CORPORATION OF COPENHAGEN, DENMARK,
Defendant.

Plaintiff, Morris & Company, a corporation organized and existing under the laws of the state of Louisiana, by attorneys, complains of the defendant, Skandinavia Insurance Company, Limited, a corporation organized and existing under the laws of the Kingdom of Denmark,

with its home office in the city of Copenhagen, and which is doing business in the state of Mississippi, under the laws thereof, in a plea of trespass on the case:

For that, whereas, heretofore, to-wit: on the 11th day of July, 1918, and prior and subsequent thereto, the defendant was and is engaged in the business of marine insurance, insuring vessels and their cargoes against various losses, for hire, and had a branch agency in the city of Buenos Aires, Argentine Republic.

That, on, prior and subsequent to said 11th day of July, 1918, the plaintiff, Morris & Company, was and is engaged in the business of packer and exporter of meats used for human food, for commercial purposes, doing business in the United States and in various foreign countries, and having an office and branch in the city of Havana, Cuba.

That, on May 20, 1918, there was issued to the said plaintiff, Morris & Company, by the master of the vessel Normandy, in the port of Montevideo, Uraguay, a bill of lading on Four Thousand Three Hundred Eleven (4311) barrels of jerked beef belonging to plaintiff, to be carried by said vessel for the plaintiff to the port of Havana, Cuba.

That, on the 11th day of July, 1918, the defendant insurance company issued to plaintiff a policy of insurance in the sum of Fifty Thousand Dollars, United States gold, covering and insuring said jerked beef belonging to plaintiff on said vessel, and, by the terms of said policy, did insure plaintiff against loss of said meat by any of the perils mentioned in said policy to the extent

of Fifty Thousand Dollars ($50,000), a copy of which said policy is hereto attached and prayed to be made a part of this declaration, as Exhibit "A" hereto.

That, thereafter, and on, to-wit: May 23, 1919, and solely because of perils insured against under the said policy as referred to above, the said consignment of Four Thousand Three Hundred Eleven (4311) barrels of jerked beef insured by the defendant became a total loss, and, under the terms of said policy, the defendant
6 thereby became liable to pay the plaintiff the full amount of said policy.

That the plaintiff at all times complied with the terms of said policy as to the payment of the premium thereon and in all other respects, and said policy on said jerked beef was in full force and effect when said jerked beef so insured by defendant became a total loss solely by reason of perils insured against by said policy.

Plaintiff avers that, on the 23d day of May, 1919, at the said port of Montevideo, Uraguay, the said vessel Normandy and her cargo were destroyed by fire; and that by the total loss of said 4311 barrels of jerked beef belonging to plaintiff, solely because of perils insured against by defendant under the said policy aforesaid on said jerked beef, the defendant became liable to plaintiff, Morris & Company, in the sum of $50,000, United States gold, under said policy.

That the plaintiff has made repeated demands upon the defendant insurance company for said sum so due it under the terms of said policy by its loss, yet the said defendant has wholly failed and refused and still fails and refuses to pay said sum so due under said policy and loss covered thereby, and no part of same has been paid;

and said defendant Skandinavia Insurance Company, is thereby now indebted to the plaintiff in the sum of
7 $50,000., United States gold, for said loss, with interest thereon at six per cent. per annum from the 23d day of May, 1919, until paid.

Wherefore, plaintiff sues, and demands judgment against defendant in said sum of $50,000., principal, and six per cent. interest thereon from May 23, 1919, until paid.

MIZE & MIZE,
Attorneys for Plaintiff.

EXHIBIT "A" TO DECLARATION.

COPY

"Skandinavia" Reinsurance Company Limited
General Agency Buenos Aires.

Head Office
Copenhagen (Denmark)

Capital
Crowns: 10,000,000

Galeria General Guemes.
A. Johnston
General Agent for South America

Direct Marine Insurances.

Policy No. 2612 Sum insured $50,000 U. S. Gold.

Whereas it hath been proposed to "Skandinavia" Reinsurance Company Limited by .... Messrs. Morris &

Company ..... as well in their ..... own name as for and in the name and names of all and every other person or persons to whom the subject matter of this policy does, may or shall appertain in part or in all to make with the said Company the Insurance hereinafter mentioned and described. Now this Witnesseth that in consideration of the said person effecting this Policy promising to pay to the said Company the sum of ..... as a Premium at
s and after the rate of nine per cent .... percent for such Insurance of the said Company takes upon itself the burthen of such Insurance to the amount of Fifty Thousand Dollars United States Gold, and promises and agrees with the Insured, their Executors, Administrators and Assigns in all respects truly to perform and fulfil the Contract contained in this policy. And it is hereby agreed and declared that the said Insurance shall be and is an Insurance (lost or not lost) at and from Montevideo to Cuba. And it is also agreed and declared that the subject matter of this Policy as between the Insured and the Company so far as concerns this Policy shall be had is as follows upon ... jerked beef, valued at $200,000 U. S. Gold, in the Ship or Vessel called the S. V "Normandy" .... whereof .... is at present Master of whoever shall go for master in the Ship or Vessel, Including all risk of Craft of Lighter to be considered as if separately insured.

To conform with the Revenue Law of Great Britain this Policy is required to be stamped within ten days after its receipt in the United Kingdom.

Goods carried on deck warranted free of all average.

Grounding in the River Plate and or tributaries thereof not to be considered stranding, but underwriters to pay for any damages directly resulting therefrom.

General average salvage and special charges payable if required as per Foreign Statement or as per York-Antwerp Rules 1890 if in accordance with the contract of Affreightment.

Conditions: Free from particular average unless the vessel or craft be stranded, sunk or burnt.

Claims payable in Buenos Aires, by "Skandinavia" Insurance Company. In the event of loss or damage for which the Company is presumed to be liable immediate notice must be given to Mr. Aquiliso Ordonez, 76 and 78 Cuba, Str. Havens.

And the said Company promises and agree that the Insurance aforesaid shall commence from the time when the Goods and Merchandise shall be laden on board the said ship or Vessel, Craft or Boat as above and continue until the said Goods and Merchandise be discharged and safely landed at as above. And that it shall be lawful for the said Ship or Vessel in the voyage so insured as aforesaid to proceed and sail to and touch and stay at any Ports or Places whatsoever without prejudice to this Insurance. And touching the Adventures and Perils which the said Company is contented to bear
9 and does take upon itself in the voyage so insured as aforesaid they are of the Seans, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter Mart, Surprisals, takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People of what nation, condition or quality soever Barratry of the Master and Mariners and of all other perils, losses and misfortunes that have or shall come to the Hurt, Detriment or Damage of the aforesaid subject matter of this Insurance or any part thereof. And in case of any loss or

misfortune it shall be lawful to the Insured, their factors, Servants and Assigns, to sue, labor and travel for, in and about the Defense, Safeguard and Recovery of the aforesaid subject matter of this Insurance or any part thereof without prejudice to this Insurance the charges whereof the said Company will bear in proportion to the sum hereby Insured. And it is expressly declared and agreed that the acts of the Insurer or Insured in Recovering, Saving or preserving of the Property insured shall not be considered a waiver or acceptance of abandonment.

The Holders of this policy are likewise requested not to sign a general average bond nor to pay a general average deposit without having previously obtained the consent of the above mentioned Agents.

Warranted free of loss or damage caused by strikes locked-out workmen or persons taking part in labour disturbances or riots or civil commotions. Unless otherwise stated hereon in writing, Goods and or Merchandise are warranted free from particular average unless the Vessel or Craft be stranded, sunk or burnt ..... Underwriters, notwithstanding this warranty to pay for any damage or loss caused by collision, with any other Ship or Craft, and any special charge for warehouse rent, re-shipping or forwarding, for which they would otherwise be liable. Also to pay the insured value of any package or packages which may be totally lost in transhipment. ..... "Warranted free of capture, seizure, arrest, restraint or detainment, and the consequence thereof or of any attempt thereat (piracy excepted), and also all consequences or hostilities or warlike operations whether before or after declaration of war.

In witness whereof the undersigned on behalf of the said Company has hereunto set his hand in Buenos Aires the eleventh ..... day of July, 1918.

For "Skandinavia" Reinsurance Company, Limited.
May 18th, 1922.

Indorsements on back of Declaration and Exhibit "A":
No. 7975 Morris & Company vs. Skandinavia Insurance Company, Limited.

Declaration: Filed April 16, 1925. A. J. Ramsay, Clerk. By E. G. Lindsey, D. C. Mize & Mize, Attorney for Plaintiff.

11 SUMMONS.

The State of Mississippi,
Harrison County.
To the Sheriff of Hinds County—Greeting:

We command you, hereby, that you summon Skandinavia Insurance Company, Limited, a Corporation of Copenhagen, Denmark, defendant, if to be found in your County, so that it be before the Circuit Court, to be holden in and for the County of Harrison, at the Courthouse thereof, in Gulfport, in said County State aforesaid, on the second Monday of October, A. D. 1925, to answer the Declaration of Morris & Company, a Corporation, plaintiff, against said defendant, now on file in the Clerk's office of said Court. And have you then and there this summons.

Witness A. J. Ramsay, Clerk of said Court, by his signature, and also the Seal of said Court, affixed at his office in Gulfport.

Issued the 16th day of April, A. D. 1925.
(Seal) A. J. RAMSAY, Clerk.
By E. G. LINDSEY, D. C.

The Declaration on file is founded on an action of debt. The amount demanded in this suit is the sum stated in said Declaration—Fifty Thousand Dollars and lawful interests and costs. Judgment will be demanded at Return Term. Declaration filed when summons issued.
(Seal) A. J. RAMSAY, Clerk,
By E. G. LINDSEY, D. C.
MIZE & MIZE, (Gulfport, Miss.)
Attorneys for Plaintiff.

12 Sheriff's Return.

Received in office this 17 day of April, 1925.
W. S. WELLS, Sheriff,
By W. A. SANDEL, D. S.

I have this day executed the within writ personally on the within named defendant, Skandinavia Insurance Company, Ltd., of Copenhagen, Denmark, by delivering a true copy of said writ to T. M. Henry, Insurance Commissioner for the State of Mississippi and Attorney for Process for the said non-resident defendant, this the 17 day of April, 1925.
W. S. WELLS, Sheriff,
By W. A. SANDEL, D. S.

Indorsements on back of Summons: No. 7975 Circuit Court Harrison County, Miss. Morris & Company vs. Summons Skandinavia Insurance Company, Limited. To be served upon Insurance Commissioner. Term, October, 1925. Issued April 16th, 1925. A. J. Ramsay, Clerk.

Returned and filed April 20, 1925. A. J. Ramsay, Clerk.

13 CERTIFICATE OF MAILING COPY OF SUMMONS.

The State of Mississippi,
Harrison County.

I, A. J. Ramsay, Clerk of the Circuit Court of said County and State, hereby certify that I have on this, the 16th day of April, 1925, mailed as required by law, a true copy of the Original Summons or process issued in cause No. 7975, styled, Morris & Company vs. Skandinavia Insurance Company, Ltd., addressed to defendant as follows:

"Skandinavia Insurance Company, Limited,
Copenhagen, Kingdom of Denmark."

Given under my hand and official seal of office, this, the 16th day of April, 1925.

(Seal) A. J. RAMSAY, Clerk Circuit Court, Harrison County, Mississippi.
By E. G. LINDSEY, D. C.

U. S. Registry Receipt No. 7042, dated April 16, 1925.
Filed April 16, 1925.

A. J. RAMSAY, Clerk.
By E. G. LINDSEY, D. C.

14 COPY OF SUMMONS SERVED ON INSURANCE COMMISSIONER.

I, T. M. Henry, Insurance Commissioner of the State of Mississippi, do certify that the following is a true and correct copy of the summons this day served on me as

Attorney for Service, by the Sheriff of Hinds County, Mississippi, at my office in the City of Jackson, at 2.00 o'clock, P. M.

Given under my hand and signature this 17th day April, 1925.

(Seal) T. M. HENRY, Insurance Commissioner and Attorney for Service.

The State of Mississippi,
Harrison County.
To the Sheriff of Hinds County—Greeting:

We command you, hereby, that you summon Skandinavia Insurance Company, Limited, a Corporation of Copenhagen, Denmark, defendant if to be found in your county, so that it be before the Circuit Court to be holden in and for the County of Harrison, at the Court House thereof, in Gulfport, in said County, State aforesaid, on the second Monday of October, A. D. 1925, to answer the Declaration of Morris & Company, a Corporation, plaintiff, against said defendant, now on file in the Clerk's office of said Court. And have you then and there this summons.

Witness A. J. Ramsay, Clerk of said Court, by his signature, and also the Seal of said Court, affixed at his office in Gulfport.

Issued the 16th day of April, A. D. 1925.

A. J. RAMSAY, Clerk,
By E. G. LINDSEY, D. C.

The Declaration on file is founded on an action of debt. The amount in this suit is the sum stated in said Declara-

tion—Fifty Thousand Dollars and lawful interests and costs. Judgment will be demanded at Return Term. Declaration filed when summons issued.

A. J. RAMSAY, Clerk,
15 By E. G. LINDSEY, D. C.
MIZE & MIZE (Gulfport, Miss.),
Attorneys for Plaintiff.

A true copy of the original summons, as I hereby certify, this April 16, 1925.

Filed April 20, 1925.

A. J. RAMSAY, Clerk.

16 MOTION AND AFFIDAVIT FOR COSTS.

October Term, 1925.

Morris & Company
vs. No. 7975
Skandinavia Insurance Co., a Corpn.

Comes the Clerk of this Court and moves the Court to require the plaintiff herein to give security for costs, as per affidavit on file herewith.

A. J. RAMSAY, Circuit Clerk,
By E. G. LINDSEY, D. C.

In the Circuit Court

State of Mississippi,
Harrison County.

Morris & Company
vs.
Skandinavia Insurance Co., a Corpn.

Personally appeared before me, the undersigned authority in and for the said County and State, the Clerk of the Circuit Court of said County and State, who, being by me first fule sworn, deposes and says that the Plaintiff in the above styled cause is a non-resident of this State, and has not, as he believes, sufficient property in this State out of which the costs in this cause can be made if adjudged against it, and that this affidavit is not made at the instance of the defendant.

A. J. RAMSAY, Clerk of the Cir-
17 cuit Court.
By E. G. LINDSEY, D. C.

Sworn to and subscribed before me this the 25th day of September, 1925.

(Seal) EUSTIS McMANUS, Clerk of the Chancery Court.
By CHAS. HEWES, D. C.

Filed September 25, 1925.

A. J. RAMSAY, Clerk.
By E. G. LINDSEY, D. C.

18 ORDER SUSTAINING MOTION FOR COSTS.

Morris & Company
vs. No. 7975
Skandinavia Insurance Company, Ltd.

The Motion of the Clerk of this Court to require the plaintiff herein to give security for costs, being heard and considered by the Court, is by the Court sustained.

October Term, 1925.
October 12, 1925.

19 NOTICE OF INTENTION TO REMOVE CAUSE TO U. S. DISTRICT COURT.

In the Circuit Court. October Term, 1925.

State of Mississippi.
Harrison County.

Morris & Company, a Corporation, plaintiff,
vs.
Skandinavia Insurance Company, Limited, a Corporation of Copenhagen, Denmark, defendant.

To the above named Morris & Company, plaintiff, and Messrs. Mize & Mize, its Attorneys of Record:

You and each of you will please take notice that on the 8th day of October, 1925, at the hour of 9 o'clock, A. M., the above named defendant, the Skandinavia Insurance Company, Limited, will file in the above entitled Court the said defendant's petition and bond as required

by law for the removal of the said cause from the said above entitled Court to the District Court of the United States for the Southern Division of the Southern District of Mississippi. Copies of the said petition and bond are attached hereto. Upon the filing of the said petition and bond, or as soon thereafter as defendant can be heard defendant will call to the attention of the said Circuit Court of Harrison County, Mississippi, the said petition and bond and will move the said Circuit Court
20 of Harrison County, Mississippi, for an order of removal of the said action from the said Circuit Court of Harrison County, Mississippi, to the said District Court of the United States for the Southern Division of the Southern District of Mississippi, upon the grounds as stated in the said petition and upon the said petition and bond so filed and presented.

PILLANS, CAWLEY & GRESHAM,
LEATHERS & SYKES, by SYKES,
Attorneys for Defendant.

Service of the foregoing is acknowledged, and we also acknowledge receipt of a copy thereof this 7 day of October, 1925.

Copy received, October 7, 1925.

MIZE & MIZE.

Filed October 8, 1925.

A. J. RAMSAY, Clerk,
By E. G. LINDSEY, D. C.

21 PETITION FOR REMOVAL TO U. S. DISTRICT COURT.

In the Circuit Court, October Term, 1925.

State of Mississippi,
Harrison County.

Morris & Company, a Corporation, plaintiff,
vs.
Skandinavia Insurance Company, Limited, a corporation of Copenhagen, Denmark, defendant.

To the Honorable Circuit Court of Harrison County, Mississippi:

Your petitioner, the said Skandinavia Insurance Company, Limited, respectfully shows unto this Honorable Court that the matter and amount in dispute in the above entitled suit exceeds the sum or value of three thousand dollars, exclusive of interest and costs; and that the controversy in said suit is, and at the time of the commencement of the suit was, between a citizen of one of the States of the United States and a foreign citizen or subject, in this: That your petitioner, the defendant in the above styled suit, was at the time of the commencement of the said suit and still is a corporation organized under the laws of and a resident of and a citizen of the Kingdom of Denmark; and that said plaintiff corporation, in the said above styled suit, was at the time of the commencement of this suit and still is, a corporation organized under the laws of and a resident of and a citizen of the State of Louisiana in the United States of America.

And your petitioner offers herewith a good and sufficient surety for your petitioner's entering in the District

Court of the United States for the Southern
22 Division of the Southern District of Mississippi,
within thirty days from the date of the filing
of this petition, a certified copy of the record of the said above styled suit, and for paying all costs that may be awarded by the said District Court should hold that this suit was wrongfully or improperly removed thereto.

And your petitioner respectfully prays this Honorable Court to proceed no further herein except to make the order of removal required by law and to accept the said surety and bond and cause the record herein to be removed into the said District Court of the United States in and for the Southern Division of the Southern District of Mississippi.

And your petitioner will ever pray &c.

SKANDINAVIA INSURANCE COMPANY, LIMITED.

(Seal)

By Wm. H. McGEE & C., Managers
U. S. Marine Dept.
Its H. JACKSON, Vice President

State of New York,
County of New York.

Before me, the undersigned officer authorized to administer oaths, this day personally came and appeared H. Jackson, who, being by me first duly sworn, on oath doth depose and say as follows:

I am Vice-President of Wm. H. McGee & Co., Managers U. S. Marine Dept., for the Skandinavia Insurance Company, Limited, and as such am authorized to sign the foregoing petition for and on behalf of and as
23 the act of my of my said principal and I am authorized to make this verification thereof;

and I do on oath say that the matters and facts stated in the foregoing petition are true.

H. JACKSON.

Subscribed and sworn to before me this 11th day of September, A. D. 1925.

(Seal) DENNIS B. RYAN, Notary Public, New York County Clerk's No. 362, New York County Register's No. 6302, Commission expires March 30, 1926.

POWER OF ATTORNEY OF WM. H. McGEE & COMPANY.

State of New York,
County of New York,

Before me, the undersigned officer authorized to administer oaths this day personally came and appeared H. Jackson, who, being by me first duly sworn, on oath doth depose and say as follows:

I am vice-president of Wm. H. McGee & Co., Managers United States Marine Department for the Skandinavia Insurance Company, Limited, and hereby certify that the papers attached to and made a part of this affidavit are true and correct copies of the powers of attorney given to Wm. H. McGee & Co., by the Skandinavia
24 Insurance Company, Limited.

H. JACKSON.

Subscribed and sworn to before me this 11th day of September, A. D. 1925.

(Seal) DENNIS B. RYAN, Notary Public, New York County Clerk's No. 362, New York County Register's No. 6302, Commission Expires March 30, 1926.

AMENDMENT OF POWER OF ATTORNEY TO WILLIAM H. McGEE AND COMPANY.

Know all men by these presents, that I, Summer Ballard, by virtue of the power and authority given to me in and by a letter of attorney of the Skandinavia Insurance Company, Limited, of Copenhagen, Denmark, on September 1st, 1916, do hereby amend, modify and limit the authority given by me to William H. McGee & Company in a certain power of attorney dated November 13th, 1916, to represent the said Skandinavia Insurance Company in the United States as General Agents, Attorneys and Substitutes in all matters pertaining to marine insurance and marine reinsurance.

The said power of attorney to William H. McGee & Company is hereby amended, modified and limited so that the said William H. McGee & Company shall have and retain all power and authority granted thereunder except the power and authority to issue new insurances or reinsurances for and or bind the said company on new commitments which specifically excepted power and authority is hereby revoked and canceled on and after April 1st, 1923.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the company at the City of New York this 26th day of March, 1923.

SUMMER BALLARD,
U. S. Manager.
DANIEL F. GNOM, Witness.

APPOINTMENT OF ATTORNEY.

Know all men by these presents that I, Summer Ballard, by virtue of the power and authority to me given in and by a letter of attorney of the Skandinavia Insurance Company, dated Copenhagen, Denmark, September 1, 1916, a certified copy of which is hereto attached, do hereby make, substitute and appoint William H. McGee & Company, of New York as General Agents, Attorney and Substitute in all matters pertaining to marine insurance and marine reinsurance business of the said Skandinavia Reinsurance Company named in the said letter of attorney, in and for the United States of America, with full power to conduct for the Company all such business of marine insurance and marine reinsurance in the State of New York and elsewhere in all the several States of the United States, as Marine Insurance and Marine Reinsurance Companies are permitted to transact under the Insurance Laws of the State of New York and such other States of the United States.

26 And further, the said William H. McGee & Company, so appointed General Agents, Attorneys and Substitutes shall have full power and authority to execute and sign all such statements or other documents or agreements of and relating to the Company's

business in the United States or any State thereof, as may at any time or times be required by the laws of any such State; and also to grant, execute and sign in the name of the Company all certificates, contracts of Marine Insurance and Marine Reinsurance, addendums to such, or other documents, including appointments of Attorneys for the service of legal process; to receive for and on behalf of the Company any money due it and to make any payments due by it; to settle and negotiate all claims resulting from such contracts of Marine Insurance and Reinsurance; to collect and collate returns for the annual Statements to be filed with the various Insurance Departments; and also to appear before all Courts and officers and tribunals and make acknowledgments of all such documents as they shall execute by virtue hereof, as and for the act and deed (or acts and deeds) of the said company.

And further, the said William H. McGee & Company, as General Agents, Attorneys and Substitutes, may engage and dismiss the necessary staff, designate and appoint one or more persons, firms or corporations as their assistants or substitutes to do and perform the several acts, matters and things hereinbefore specified, or any of them with the same force and effect as though done by them.

27 This appointment is to continue in force until a revocation of same shall be filed in the Insurance Department of the State of New York, duly executed by me or my successor as United States Manager of said Company.

In witness whereof I have hereunto subscribed my name and affixed the seal of the company at the City of New York, this 13th day of November, 1916.

SUMMER BALLARD.

APPOINTMENT OF ATTORNEY.

Know all men by these presents: that the Skandinavia Reinsurance Company, a corporation formed and existing under the laws of the Kingdom of Denmark and fully authorized to conduct business of Fire and Marine Insurance and Reinsurance within the said Kingdom and elsewhere, has constituted, and by these presents does constitute and appoint Summer Ballard of New York its Resident Manager and Attorney in and for the United States of America, with full power to conduct for the Company all such business of Fire and Marine Insurance and Reinsurance in the State of New York and elsewhere in all the several states of the United States, as Fire and Marine Insurance and Reinsurance Companies are permitted to transact under the Insurance Laws of the State of New York and such other States of the United States, and generally to do all acts and deeds appertaining to the affairs and operations of said Company in the United States in as full and complete a manner as the said Company is authorized by its Charter, or acts of incorporation or otherwise however to do.

And further, the said Summer Ballard so appointed Resident Manager and Attorney shall have full power and authority to execute and sign all such Statements or other documents or agreements of and relating to the Company's business in the United States or any State thereof, as may at any time or times be required by the laws of any such State; and also to grant, execute and sign in the name of the Company all certificates, contracts of Fire and Marine Insurance and Reinsurance,

addendums to such, agreement for the rent of offices, or other documents, including appointments of Attorneys for the service of legal process; to receive for and on behalf of the Company any money due it and to make any payments due by it; to settle and negotiate all claims resulting from such contracts of Fire and Marine Insurance and Reinsurance; to collect and collate returns for the annual Statements to be filed with the various Insurance Departments; and also to appear before all Courts and officers and tribunals, and make acknowledgments of all such documents as they shall execute by virtue hereof, as and for the act and deed (or acts and deeds) of the said Company.

29 And further, the said Summer Ballard as Resident Manager and Attorney, may engage and dismiss the necessary staff, designate and appoint one or more persons, firms or corporations as his assistants or substitutes to do and perform the several acts, matters and things hereinbefore specified, or any of them with the same force and effect as though done by him.

This appointment is to continue in force until a revocation of same shall be filed in the Insurance Department of the State of New York, duly executed by the officers of said Company under its corporate seal.

In witness whereof, the said Skandinavia Reinsurance Company has to these presents affixed its corporate seal and caused the name to be subscribed by its President of the Board of Directors Carl Winther Esq., and General Manager Carl Frederick Wilhelm Witzke Esq., at Cop

enhagen, Denmark, on the first day of September, One Thousand Nine Hundred and Sixteen.

GENFORSIKRINGS-
AKTIESELSKASET
"SKANDINAVIA"
(Seal) Direktionen.
CARL WINTHER, Esq.,
President.
WITZKE, General Manager.

Canceled I. R. Stamp, Kingdom of Denmark.

On this 1st day of September in the year of our Lord One thousand nine hundred and sixteen: Before the undersigned Charles Otto Moltved, Sub-notary in and for this city and Royal Residence of Copenhagen, personally came and appeared Messrs. Carl Winther and Carl Frederick Wilhelm Witzke, well known to me, and did with their own hand on behalf of the joint stock Company "Genforsikrings Aktieselskabet Skandinavia" in my presence duly sign the foregoing appointment of attorney, the contents of which they ratified, asserting to be fully acquainted with the tenor of the same, according to the registers of commercial firms and societies of the Municipality of Copenhagen, which registers have been exhibited to me on this day. I further certify that Mr. Winther is a member of the board of directors and Mr. Witzke one of the Managers of the above named Joint-stock company, and that Mr. Witzke is entitled to sign above on behalf of the said company.

Done and passed at the office of the said company, No. 6 Kongens Nytow, in the presence of the hereunto subscribing notarial witnesses, Messrs. Ove Fredericksen and K. Sigvartsen.

In testimony whereof under my hand and the notarial seal of offices.

Copenhagen, year and day first above written.

C. MOLTVED,
Sub-notary.

(Seal)

OVE FREDERICKSEN,
K. SIGVARTSEN,
Witnesses.

Fees and Stamps, etc., 1070. Ten Crowns.

31 Consulate General of the United States of America. Copenhagen, Denmark.

I, E. D. Winslow, Consul-General of the United States of America at Copenhagen, Denmark, do hereby certify that the seal of the Notary Public in and for the City of Copenhagen, Denmark, and the signature of C. Moltved, Sub Notary Public is and for the City of Copenhagen in the Kingdom of Denmark to the instrument of writing hereto annexed, are true and genuine, and as such are entitled to full faith and credit.

In testimony whereof, I have hereunto subscribed my name and affixed my Seal of office, this 13th day of September, A. D. 1916.

E. D. WINSLOW,
Consul General of the
United States of America.

(American Consular Service $2 Fee Stamp.) No. 1063

Filed October 8, 1925. A. J. Ramsay, Clerk, by E. G. Lindsey, D. C.

BOND FOR REMOVAL TO U. S. DISTRICT COURT.

Be it known that the undersigned Skandinavia Insurance Company, Limited, as principal and the American Surety Company of New York, as surety, are held and firmly bound unto Morris & Company, a corporation, in the sum of five hundred dollars, for the payment of which well and truly to be made unto the said Morris & Company, a corporation, its successors and assigns, the said Skandinavia Insurance Company, Limited, and the said American Surety Company of New York bind respectively, severally and jointly, themselves and their and each of their successors and assigns, firmly by these presents; upon condition nevertheless that:

32

Whereas the above named Morris & Company, a corporation, did heretofore bring a suit of a civil nature against the above named Skandinavia Insurance Company, Limited, in the Circuit Court of Harrison County, Mississippi;

And whereas the said Skandinavia Insurance Company, Limited, simultaneously with the filing of this bond will file its petition in the said Circuit Court of Harrison County, Mississippi, for the removal of the said suit into the District Court of the United States in and for the Southern Division of the Southern District of Miss. according to the provisions of the Acts of Congress in such case made and provided:

Now therefore, the condition of this obligation is such that if the said petitioner, the Skandinavia Insurance Company, Limited, shall enter in the District Court

of the United States for the Southern Division of the Southern District of Mississippi within thirty days after the date of filing of this petition, a certified copy of the record in such suit and shall well and truly pay all costs that may be awarded by the said District Court of the United States, if such Court shall hold that such suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in such suit if special bail was originally requisite therein; then the above obligation shall be void but shall otherwise re-
33 main in full force and virtue.

In testimony of all which, the said principal and surety have caused these presents to be signed with their names and sealed with their seals this 11th day of Sept., A. D. 1925.

SKANDINAVIA INSURANCE
(Seal) COMPANY, LIMITED,
By WM. H. McGEE & CO.,
Managers U. S. Marine Dept.
Its H. JACKSON, Vice President.
Thereunto lawfully authorized.

AMERICAN SURETY COM-
(Seal) PANY OF NEW YORK.
By S. A. TOMLINSON,
Its Duly Authorized Attorney
in Fact.

The foregoing bond and surety accepted and approved, this 12th day of October, 1925.

W. A. WHITE,
Circuit Judge.

25c canceled I. R. Stamp

American Surety Company of New York.
Capital $5,000,000.

Limited Power of Attorney.

Know all men by these presents:

The American Surety Company of New York, a corporation of the State of New York, of No. 100 Broadway, in the City of New York, in said State, has made, constituted and appointed, and by these presents does hereby make, constitute and appoint S. A. Tomlinson its true, sufficient and lawful attorney, with full power and authority to make, execute and deliver, for it, in its name and in its behalf as surety, a bond or
34 undertaking, as follows: Removal bond not exceeding $500.00 on behalf of Morris & Company in its suit versus Skandianvia Insurance Company, hereby giving its said attorney full power and authority to do everything whatsoever requisite and necessary to be done for the purpose of making, executing and delivering such obligations as fully as the officers of said American Surety Company of New York could do if personally present, and hereby ratifying and confirming all that its said attorney shall lawfully do or cause to be done by virtue hereof, but reserving to itself full power of substitution and revocation.

The authority contained herein is void if not availed of within thirty days from the date of this instrument.

In witness whereof, the said American Surety Company of New York has caused its corporate seal to be hereunto affixed and these presents to be duly executed by

its proper officers at the City of New Orleans, State of Louisiana, on this 5th day of October, 1925.

AMERICAN SURETY COMPANY OF NEW YORK.

(Seal) By H. McGEE,
Resident Vice-President.

Attest:

SHELTON SANDOZ,
Resident Assistant Secretary.

At a regular meeting of the Executive Committee of the Board of Trustees of the American Surety Co. of New York, held at the office of the Company at No. 100 Broadway, in the City of New York, on the twentieth day of August, 1912, the following resolution was adopted:

"Resolved that one of the Resident Vice-Presidents, and one of the Resident Assistant Secretaries of this Co. at New Orleans, in the State of Louisiana, be and they hereby are authorized and empowered to make, execute and deliver, in behalf of the Company, unto such person or persons in the States of Louisiana and Mis-
35 sissippi, as they may select, its power of attorney constituting and appointing each such person its Attorney in Fact, with full power and authority to make, execute and deliver, for it, in its name and in its behalf, as surety, any particular bond or undertaking that may be required in the same States of Louisiana and Mississippi, the nature of such bond or undertaking to be in each instance specified in such power of attorney."

State of New York,
County of New York, ss.

I, H. E. Ising, Assistant Secretary of the American Surety Co. of New York, hereby certify that I have compared the foregoing resolution with the original thereof, as recorded in the Minute Book of said Company, and that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the Company at the City of New York, this 2nd day of February, 1925.

H. E. ISING,
Assistant Secretary.

Filed October 8, 1925. A. J. Ramsay, Circuit Clerk, by E. G. Lindsey, D. C.

36 ORDER REMOVING CAUSE TO U. S. DISTRICT COURT

Morris & Company,
vs. No. 7975.
Skandinavia Insurance Company, Limited

It appearing to the Court that the Defendant in the above stated case has filed in this Court in said cause, a Petition for the removal of the cause to the Southern Division of the Southern District of the United States Court for Mississippi, together with Bond in the sum of Five Hundred ($500.00) Dollars, conditioned according to law, with American Surety Company of New York, as surety, which said bond is hereby accepted and approved

by this Court. It is ordered by this Court that the prayer of said Petition be granted and that the Clerk of this Court be and he is hereby directed to file a transcript of the record in this cause together with said bond in said Division of said Court at Biloxi, Mississippi, within the time as required by law in such cases.

Ordered this 12th day of October, 1925.

W. A. WHITE, Judge.

October Term, 1925.

October 12, 1925.

37 CERTIFICATE.

The State of Mississippi,
Harrison County.

I, A. J. Ramsay, Clerk of the Circuit Court of said County and State, do hereby certify that the foregoing 27 pages contain a true, correct and complete Transcript of the Record in cause No. 7975, styled, Morris & Company versus Skandinavia Insurance Company, Limited, of Copenhagen, Denmark, upon the General Civil Docket of said Court, including the Order of Court removing said cause to the U. S. District Court at Biloxi, Mississippi, as the original of same appear of record and remain on file in my office.

Given under my hand and official seal, this the 27th day of October, A. D. 1925.

A. J. RAMSAY,
Clerk of the Circuit Court, of
(Seal of the Court) Harrison County, Mississippi.

By E. G. LINDSEY, D. C.

38 In the District Court of the United States for the Southern Division of the Southern District of Mississippi.

Morris & Company, Plaintiff,

vs. No. 439 at Law.

Skandinavia Insurance Company, Limited, Defendant.

Be it remembered, that, on to-wit, the 7th day of September, 1927, the same being one of the days of the September Term, 1927, of the District Court of the United States for the Southern Division of the Southern District of Mississippi, at Biloxi, Mississippi, the above numbered and entitled cause came on for final hearing, the Honorable Edwin R. Holmes, Judge of said Court, presiding, and the other officers of the Court being present and acting.

That said cause came on to be heard on the pleadings of the defendant and the replications of the plaintiff and on the demurrers of the defendant to the replications of the Plaintiff and on the issue being joined by the plaintiff's replications to the pleas of the defendant, all of which more fully appear hereinafter, and all of which pleas, replications, demurrers and motions are hereinafter set out which raised the questions of law to be determined, together with the rulings of the
39 Court thereon and the exceptions of the plaintiff taken and allowed, and the rulings of the Court made herein at previous terms being also fully set out hereinafter; and a jury was duly impaneled and sworn to try said issue joined.

The defendant filed a motion to quash the service of process of the defendant, appearing specially for that

purpose only, on November 27, 1925, and, appearing specially for that service only, on November 27, 1925, also filed a plea to the jurisdiction, to which, on February 21, 1927, the plaintiff filed a demurrer to the defendant's motion and to the plea in abatement, which demurrer the defendant moved to strike from the files by its motion filed February 23, 1927, and on the hearing of which, counsel for plaintiff admitted in response to question of counsel for the defendant, that the suit in New York had been dismissed and the Court thereupon declined to permit the demurrer of the plaintiff to be filed, and permitted the plaintiff to file several replications to each of the defendant's pleas in abatement, and directed the plaintiff to traverse or admit or otherwise to reply to the allegations contained in the motion to quash the process.

That plaintiff thereupon filed an answer to the motion of the defendant to quash the return on the process, on the 13th day of May, 1927, and on the 13th day of May, 1927, the plaintiff filed ten replications to the defendant's plea in abatement and filed a replication to the defendant's second plea in abatement, on May 13, 1927—the defendant, specially appearing for that purpose only, having filed a second plea in abatement of another suit pending; and all of which were filed by leave of the Court.

On the 17th day of May, 1927, the defendant, appearing specially for that purpose only, filed its pleas to the jurisdiction to the Second or new count of the plaintiff's complaint, added by amendment; and on May 23, 1927, the defendant by special appearance for that purpose only, filed demurrer to the plaintiff's answers to the defendant's motion to quash the process, except as to the answer numbered VII, on the same date it filed

a joinder of issue on said answer numbered VII, and on May 23, 1927, the defendant, continuing its special appearance, and appearing for that purpose only, filed demurrers to the Plaintiff's replications to plea to the jurisdiction; and, on June 13, 1927, continuing its special appearance for that purpose only, the defendant filed additional grounds of demurrer to certain answers filed by the plaintiff to the defendant's motion to quash the process; and on June 13, 1927, continuing its special appearance, for that purpose only, the defendant filed additional grounds of demurrer to certain replications filed by plaintiff to defendants' plea to the juris-
41 diction; all of which were heard; all of which were heard on the 7th day of September, 1927, as shown by the following pages hereinafter set out, and, on said 7 day of September, 1927, all of the evidence was heard before the jury on the issue joined, and, after all of the evidence had been heard, the Court peremptorily instructed the jury to find for the defendant, that the defendant was not doing business in the State of Mississippi; all of which evidence is contained in this bill of exceptions, hereinafter set out, together with all of the rulings of the Court on the questions of law raised by the pleadings and all of the exceptions of the plaintiff raised on the pleadings, evidence and instructions and allowed by the Court being set forth in the following pages, to-wit:

42 **MOTION TO QUASH SERVICE OF SUMMONS**

(Title Omitted.)

Comes the said Skandinavia Insurance Company, Limited, and appears specially for the purpose of making the motion hereinafter set out and for no other purpose,

And said Skandinavia Insurance Company, Limited, moves this Honorable Court to quash and set aside the attempted service of summons in this case and to dismiss the case for want of jurisdiction over the person of the said Skandinavia Insurance Company, Limited, for that it appears from the declaration, and the the exhibit thereto, filed by the plaintiff herein, that the plaintiff is a non-resident of the State of Mississippi and is a corporation and existing under the laws of and is a citizen and resident of the State of Louisiana; that the defendant is a non-resident of the State of Mississippi and is a corporation and citizen and resident of the Kingdom of Denmark; that the contract sued on was made and was to be performed wholly without the State of Mississippi; that the subject matter of the insurance was at all times wholly without the State of Mississippi and that the cause of action, if any there be, arose without the State of Mississippi.

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And this movant avers that it was not doing business in the State of Mississippi at the time this suit was brought, was not found therein, was not amendable to the service of summons attempted to be made on it in this case and has not waived its rights in the premises by voluntary appearance or otherwise.

PELLAN, COWLEY & GRESHAM,
LEATHERS & SYKES,
Attorneys for the Skandinavia Insurance Company, Limited

Filed Nov. 27, 1925.

44 PLEA TO JURISDICTION.

(Title Omitted.)

Comes the said Skandinavia Insurance Company, Limited, and appears specially for the purpose of filing the pleas and motions hereinafter set out, and for no other purpose.

1. The said Skandinavia Insurance Company, Limited, says and shows to this Honorable Court that the Court is without jurisdiction of the person of it the said defendant, because the attempted service of process on it was and is a abortive and void, for that it appears from the declaration filed herein by the said plaintiff, that the plaintiff is not a resident of the State of Mississipi but is a corporation organized and existing under the laws of and is a citizen and resident of the State of Lonisiana; that the defendant is not a citizen of the State of Mississippi but is a corporation and citizen and resident of the Kingdom of Denmark; that the contract sued on was made without the State of Mississippi; and was to be performed wholly without the State of Mississippi; and that the cause of action, if any there be, arose without the State of Mississippi. And
45 defendant avers that it was not doing business in the State of Mississippi at the time this suit was brought; that it was not found within the said State; that it was not amendable to the service of summons attempted to be made on it in this case; and that it has not waived its rights in the premises by voluntary appearance or otherwise; wherefore defendant prays judgment of the said attempted service of summons, that

it be quashed and set aside and that the case be dismissed for want of jurisdiction over the person of this defendant.

II. And for further plea and motion, this defendant still appearing specially and solely for the purpose of asserting its rights as in these pleas and motions set out, says that if this Honorable Court should hold that jurisdiction of defendant's person has been obtained, then this defendant, not waiving its insistence but respectfully insisting, reiterating and reasserting that this Honorable Court is without jurisdiction of defendant's person; says that it ought not to be held in this action to answer the writ and declaration of the plaintiff filed and promoted against the defendant herein, but the same ought to abate or be stayed; because, it says, the said plaintiff heretofore, to wit, at the Honorable the District Court of the United States for the Southern District of New York, holden in the City of New York in the State of New York, on to wit, the fifteenth day of November, 1921, impleaded the said defendant in a personal action in Admiralty for the same cause in the declaration aforesaid above mentioned and seeking the same relief to wit, a money judgment in personam against this defendant; which said action of the said plaintiff against the said defendant, still remains depending and undetermined, as appears by a duly authenticated copy of the files and records of the said Court, which will be produced at the hearing of this plea and motion. And the said defendant avers that the said Morris & Company named as libelant in the said action brought in the said District Court of the United States for the Southern District of New York, is the same Morris & Company that is the plaintiff in the instant suit; and that the Scandinavia Reinsurance

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Company, Ltd., named as defendant in the said libel as aforesaid, is one and the same corporation with the Scandinavia Insurance Company, Limited, named as defendant in the instant action. And defendant avers that the said District Court of the United States for the Southern District of New York, had and has jurisdiction of the action hereinbefore mentioned as brought therein by the said plaintiff against the defendant, and plaintiff's remedy therein was and is as ample and efficient as the remedy sought in the instant suit, and
47 this defendant appeared in the said action and defended and is now defending therein. And this the defendant is ready to verify:

Wherefore it prays judgment of the said writ and declaration and that the same may be quashed; or, if the Court should be of opinion that the proper relief is not the quashing of the writ but a suspension of this proceeding, then and in that event, that this Honorable Court will make and enter and order that this suit do stay and be suspended and respited until the said action so pending as aforesaid in the District Court of the United States for the Southern District of New York, should have been determined.

PILLANS, COWLEY & GRESHAM,
LEATHERS & SYKES,
Attorneys for defendant.

State of Alabama,
County of Mobile.

Before me, the undersigned officer authorized to administer oaths, this day personally appeared Palmer Pillans, who being by me duly sworn, doth on oath depose and say as follows:

48 I am a member of the law firm of Pillans, Cowley & Gresham and as such have had charge, for defendant, of the preparation of the defense of the above entitled action. As to the averments, in both the plea to the jurisdiction and the plea of lis pendens, of matter dehors the record, I am informed that they are true and do verily believe them to be true and do make oath thereto on such information and belief.

PALMER PILLANS.

Subscribed and sworn to before me this 25 day of November, A. D. 1925.

BERTHA SOSSAMAN,
Notary Public, Mobile County, Alabama.

(Seal)

Filed Nov. 27, 1925.

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49 NOTICE OF FILING OF INTERROGATORIES TO DEFENDANT.

(Title Omitted.)

To Skandinavian Insurance Company, Ltd., Defendant, or to Messrs. Leathers & Sykes, of Gulfport, Mississippi, and Messrs. Pillans, Cowling & Gresham, of Mobile, Alabama, its Attorneys of Record:

You will take notice that the plaintiff has this day filed Interrogatories to the Defendant herein in the office of the Clerk of the United States District Court for the Southern Division of the Southern District of Mississippi, at Biloxi, Mississippi.

A copy of said Interrogatories, together with a copy of the Exhibit annexed thereto is hereto attached.

This the 12th day of January, 1927.

MORRIS & COMPANY,
Plaintiff.

By S. C. MIZE,
One of attorneys of Record
for the Plaintiff.

I, S. C. Mize, one of the Attorneys of Record for Morris & Company, plaintiff in the suit styled in the foregoing notice, do hereby certify that I have this day given to Messrs. Leathers & Sykes, attorneys of record for the defendant in said cause, Gulfport, Mississippi, a true and correct copy of the Interrogatories to defendant hereto attached, together with a copy of the Exhibit annexed to said Interrogatories, and copy of the notice of the filing of said interrogatories in said cause.

Witness my signature, this the 12th day of January, 1927.

S. C. MIZE.
Of Attorneys for Plaintiff.

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50 INTERROGATORIES TO THE DEFENDANT.

(Title Omitted.)

To the Skandinavia Insurance Company, Defendant, or Leathers & Sykes, Gulfport, Mississippi, and Pillans, Cowley & Gresham, Mobile, Alabama, Attorneys of Record for Defendant:

Now comes Morris & Company, Plaintiff herein, and under and by virtue of the authority of Section 1598, Hemingway's Code of Mississippi, propounds to the Skandinavia Insurance Company, Limited, a non resident defendant, the following interrogatories:

Interrogatories No. One.

In the report made by you to the Commissioner of Insurance of the State of Mississippi, covering the period 1925, you made a report of fire risks, $3,909,510. Please annex the instruments whereunder this liability was assured, and mark the same Exhibit "A," to these interrogatories.

If these originals are not available, give the names of the companies with whom these contracts were made and the amounts of each.

51 Interrogatories No. Two.

During the same time, there is under Risks Canceled, a return of $1,413,572.00.

As to these risks, please state what risks they were—how they were canceled, and what was the method of procedure, with reference thereto. If these cancellations were accomplished by letters, annex the same, and if by word of mouth, who made the transactions and with whom were they made.

Interrogatories No. Three.

Give a list of the reinsurance companies wherein the $1,131,723 of reinsurance was placed.

Interrogatory No. Four.

In the report filed by you, it is said that you wrote reinsurance on Mississippi properties during the year 1925 aggregating $4,357,677. Please state whether or not that is a fact.

Interrogatory No. Five.

It is stated in your report to the Commissioner of Insurance of the State of Mississippi, during the year 1925, that you received gross premiums from business in Mississippi aggregating $64,870.58. Please state whether or not that statement is accurate.

Interrogatory No. Six.

Please give a list of all losses suffered in Mississippi during the year 1925, and detail where each of
52 these losses were, and how adjustments of such losses were made.

Interrogatory No. Seven.

Please state whether or not it is not a fact that in the year 1924 the annexed report report, summarized, is not true and correct, in what particulars is it incor- true and correct. And if not true and correct, in what particulars was it incorrect.

Interrogatory No. 8.

Please state whether or not the annexed report for the year 1923, as summarized, to the Commissioner of Insurance, is it not true and correct? And if the same is not true and correct, in what particulars is it incorrect, and why was it made, if incorrect, in the form wherein you submitted it?

Interrogatory No. Nine.

Please state what tax you paid to the State of Mississippi in the year 1923, and why you paid it?

Interrogatory No. Ten.

Were these taxes voluntarily paid?

Interrogatory No. Eleven.

Please state what tax you paid to the State of Mississippi for the year 1924.

53 Interrogatory No. Twelve.

Were these taxes voluntarily paid?

Interrogatory No. Thirteen.

Please state what taxes you paid to the State of Mississippi in the year 1925?

Interrogatory No. Fourteen.

Were these taxes voluntarily paid?

Interrogatory No. Fifteen.

Please state what taxes you paid to the state of Mississippi in the year 1926.

Interrogatory No. Sixteen.

When did you pay them?

Interrogatory No. Seventeen.

Were these taxes paid voluntarily?

Interrogatory No. Eighteen.

Please annex the original, if you have it, of the power of attorney executed by you to the Hon. T. M. Henery, Insurance Commissioner of the State of Mississippi.

Interrogatory No. Nineteen.

Was this power of attorney voluntarily executed by your corporation?

Interrogatory No. Twenty.

State what notice, if any, you have ever given Hon. T. M. Henery, in writing, that you were revoked or annulled the power of attorney executed to him when you applied to do business in the state of Mississippi?

54 Interrogatory No. Twenty-one.

Please annex the original power of attorney executed by you to R. C. Wilkerson, of Vicksburg, Mississippi, or to the R. C. Wilkerson Insurance Company of Vicksburg, Mississippi.

Interrogatory No. Twenty-two.

Was this power of attorney executed voluntarily?

Interrogatory No. Twenty-three.

What notices if any in writing, have you ever given to any person that this power of attorney was involuntarily executed, or that you desired to revoke the same.

Interrogatory No. Twenty-four.

Detail at large the business being done by you in the State of Mississippi subsequent to the report made for 1925, and given in that report exactly the same figures in exactly the same columns as were given to the Insurance Commissioners for that year.

Interrogatory No. Twenty-five.

Is it not a fact that you have had advertisements made in the state of Mississippi by the Insurance Commissioner of your condition, holding the same out to the people of the State of Mississippi as to the condition of your company?

Interrogatory No. Twenty-six.

Please state in what newspaper in the state of Mississippi you had those statements made and published, and annex to these interrogatories copies of each of said statements giving in detail the same.

Interrogatory No. Twenty-seven.

How were these publications in these several newspapers made?

Interrogatory No. Twenty-eight.

Who transmitted to the Insurance Commissioner of the State of Mississippi said statements?

Interrogatory No. Twenty-nine.

Did you or not authorize the payment of these accounts for such publication made in the state of Mississippi during each of these years?

Interrogatory No. Thirty

Did you know that these publications were being made each year in the state of Mississippi in pursuance of the requirements of the laws of the state of Mississippi?

Interrogatory No. Thirty-one.

What dissent did you ever make or cause to be made to the state of Mississippi with reference to a compliance with its laws as to publishing in its papers as to your condition?

56 Interrogatory No. Thirty-two.

Annex copies of the letter written by you to the Insurance Commissioner of the State of Mississippi authorizing the publication of the statement in the State of Mississippi showing your condition.

Interrogatory No. Thirty three

Please state whether or not these publications thus made in the state of Mississippi through the Insurance Commissioner were paid for by you and were made with your knowledge?

Interrogatory No. Thirty-four.

If you did or not authorize these publications to be made in the state of Mississippi, why did you pay therefor?

Interrogatory No. Thirty-five.

Who made these arrangements for publication of these statements in the state of Mississippi in these newspapers for and on your behalf.

Interrogatory No. Thirty-six.

Who conducted the correspondence appointing R. C. Wilkerson your resident agent in Mississippi?

Interrogatory No. Thirty-seven.

Was this appointment voluntarily?

Interrogatory No. Thirty-eight.

Was it not a fact that you were a party defendant in the suit of Stokes vs. Roberston vs. the Aetna Insurance Company et al., in the State of Mississippi.

37 Interrogatory No. Thirty-nine.

Was it not a fact that you contributed to the expense of the employment of counsel in Mississippi at that time?

Interrogatory No. Forty.

Give the amount of money that you paid for employment of counsel in Mississippi towards the defense of this cause in the State of Mississippi at that time.

Interrogatory No. Forty-one.

Did you not at that time authorize the announcement that you were withdrawing from the state of Mississippi by reason of that suit and would not do business in the State of Mississippi by reason of that suit?

Interrogatory No. Forty-two.

Did you not authorize the announcement when the other insurance companies returned to Mississippi that you would return to Mississippi, and did you return to Mississippi and qualify in Mississippi.

Interrogatory No. Forty-three.

When and where did you ever notify anyone officially in the state of Mississippi that you would not do direct insurance business in the state of Mississippi.

Interrogatory No. Forty-four.

How did you obtain a participation in Sprinkler-leakage insurance in Mississippi and through what companies did this reinsurance occur.

58 Interrogatory No. Forty-five.

In adjusting liability in Mississippi under these policies, what amount was charged to you for such adjustments?

Interrogatory No. Forty-six.

Is it not a fact that on the adjustments you were debited by the direct writing company with your pro rata of the cost of adjustment?

Interrogatory No. Forty-seven.

Is it not a fact that where there was a contest made of the claim that you were debited with the pro rata cost of such defense?

Interrogatory No. Forty-eight.

In what manner did you determine what risks within the state of Mississippi are suitable for carriage by you?

Interrogatory No. Forty-nine.

Is it not a fact that in pursuance of Section 5071 of the Code, which provides

"Returns as to reinsurance to be made annually or oftener, if required.—Every fire insurance company now or hereafter admitted shall annually, and at such other times as the Commissioner may require, in addition to all of the terms now, by law, required of it, or its agents or managers, make a return to the insurance commissioner in such forms and detail as may be pre-
59 scribed by him of all insurance contracted for or effected by it directly or indirectly, upon property located in the state of Mississippi, such return to be sworn to by its president and secretary, if a company of any other state of the the United States, and if a company of a foreign country, by its president and secretary, or by officers corresponding thereto, as to reinsurance as aforesaid contracted for, or effected through the foreign office, and by the United States

Manager as to such reinsurance effected by the United States branch, and if any company, domestic or foreign, shall directly or indirectly reinsure any risk taken by it on any property located in Mississippi, in any company not duly authorized to transact business herein, except as hereinbefore provided, or if it shall refuse or neglect to make the returns required in this section, the said Commissioner shall revoke its authority to transact business in this state." .....

You made returns under oath to the insurance commissioner of the state of Mississippi.

Interrogatory No. Fifty.

Are these returns, sworn to, accurate reflections of business done?

(1) Class.	(2) Gross Risks Written	(3) Risks Canceled	(4) Reinsurance In Co's. Aut. in Mississippi	(5) Total Deductions Col. 3 Plus 4.	(6) Net Risks Written Col. 2 Minus 5.
Fire	$462,582	$206,482	$124,452	$220,934	$131,648
Tornado, Wind & Cyclone	70,609	34,115	10,947	45,062	25,547
Sprinkler Leakage	2,475	500	593	1,093	1,382
	$535,666	$241,097	135,992	377,089	158,577

Premiums Received.

(1) Class.	(2) Gross Premiums on Risks Written.	(3) Return Premiums.	(4) Premiums for Reinsurance in Co's Aut. in Miss.	(5) Total Deductions Col. 3 & 4.	(6) Net Premiums Recd. Col. 2 Minus 5.
Fire	$7,194.86	$2,357.64	$2,432.64	$4,790.28	$2,404.58
Motor Vehicles	32.66	0	9.80	9.80	22.86

Tornado, Wind & Cyclone	510.78 .80	160.29 .32	105.14 0.23	265.43 0.25	245.35 0.55	
Sprinkler Leakage	7,739.10	2,517.95	2,547.81	5,065.76	2,673.34	

Losses Paid and Losses Incurred.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Class.	Losses Pd. (Deducting Salvage.)	Deduct Losses on Risks Reinsures in Aut. Miss.	Net Losses Pd. Col. 2 Minus 3.	Losses Incurred.	Deduct Losses on Risks Reinsured in Aut. Miss Cos.	Net Losses Incurred Col. 5 Minus 6.
Fire	$8,921.45	$3,203.19	$5,718.62	11,540.30	4,138.84	7,410.46
Tornado, Wind & Cyclone	1,753.71	547.72	1,207.99	1,725.71	547.72	1,207.99
Sprinkler Leakage	0	0		0.62	0.19	0.43
Total	10,647.16	3,720.91	6,926.25	13,266.25	4,656.75	8,609.88

Risks Written.

(1) Class.	(2) Gross Risks Written.	(3) Risks Canceled.	(4) Reinsurance in Co's. Aut. in Miss.	(5) Total Deductions Col. 3 Plus 4.	(6) Net Risks Written Col. 2 Minus 5.
Fire	$1,885,49	641,669	$1,253,831	1,895,500	10,008
Tornado, Wind & Cyclone	349,664	71,499	83,449	154,948	194,716
Sprinkler Leakage	31,100	4,925	7,853	12,778	18,332
	$2,266,256	718,093	1,345,133	2,036,226	203,030

Premiums Received.

(1) Class.	(2) Gross Premiums on Risks Received.	(3) Return Premiums.	(4) Premiums for Reinsurance in Aut. Miss. Companies.	(5) Total Deductions Col. 3 Plus 4.	(6) Net Premiums Rec. Col. 2 Minus 5.
Fire	27,029.33	7,656.83	16,274.89	23,931.72	3,097.61

Tornado, Wind & Cyclone	2,144.53	249.36	568.55	817.91	1,326.62
Sprinkler Leakage	14.40	0.12	4.28	4.40	10.00
	27,188.26	9,906.31	16,847.72	24,754.03	4,434.23

62 Losses Paid and Losses Incurred.

(1) Class	(2) Losses Pd. (Deducting Salvage.	(3) Deducting Losses on Risks Reinsured in Aut. Miss. Companies.	(4) Net Losses Paid Col. 2 Minus 3.	(5) Losses Incurred.	(6) Deduct Losses on Risks Reinsured in Aut. Miss. Cos.	(7) Net Losses Incurred Col. 5 Minus 6.
Fire	15,138.25	7,652.86	7,485.39	18,615.52	10,293.23	8,322.29
Tornado, Wind & Cyclone	75.62	22.69	52.93	76.37	22.92	53.45
Sprinkler Leakage	2.22	0.66	1.55	1.60	0.47	1.13
	15,216.09	7,676.21	7,539.88	18,693.49	10,316.62	8,376.87

Risks Written

(1) Class	(2) Gross Risks Written	(3) Risks Canceled	(4) Reinsurance in Co's. Aut. in Miss.	(5) Total Deductions Col. 3 Plus 4	(6) Net Risks Written Col. 2 Minus 5
Fire	3,989,510	1,415,572	1,131,723	2,545,295	1,364,215
Tornado, Wind & Cyclone	402,770	137,785	0	137,785	264,985
Sprinkler Leakage	45,052	19,813	0	19,813	25,229
	4,357,677	1,571,170	1,131,723	2,702,893	1,654,804

Premiums Received

(1) Class	(2) Gross Prem. on Risks Written	(3) Return Premiums	(4) Prem. for Reinsurance in Co's. Aut. in Miss.	(5) Total Deductions Col. 3 Plus 4	(6) Net Prem. Recd. Col. 2 Minus 5
Fire	62,614.56	16,534.10	17,048.76	33,582.86	29,031.70
Tornado, Windstorm & Cyclone	2,236.93	512.51	0	512.51	1,724.42

Sprinkler Leakage	18.15	4.40	0	4.40	13.75
Hail	.94	0	0	0	.94
	64,870.58	17,051.01	17,048.76	34,099.77	30,770.81

64

Losses Paid and Losses Incurred.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Class.	Losses Pd. Deducting Salvage.	Deduct Losses on Risks Reinsured in Ant. Miss. Companies.	Net Losses Paid Col. 2 Minus 3.	Losses Incurred.	Deduct Losses on Risks Reinsured in Ant. Miss Cos.	Net Losses Incurred Col. 5 Minus Col. 6.
Fire	14,353.22	11,882.81	2,470.41	13,844.56	12,762.79	1,081.77
Tornado, Wind & Cyclone..	12.29	0	12.29	12.34	0.23	12.57
Sprinkler Leakage..	0	0	0	0	0	0
	14,365.51	11,882.81	2,482.70	13,856.90	12,762.56	1,094.34

65 MOTION TO SURPRESS AND STRIKE PLTFF'S INTERROGATORIES.

(Title Omitted.)

Comes the said Skandinavia Insurance Company, Ltd., and appears specially for the purpose of making this motion and for no other purpose. And the said Skandinavia Insurance Company, Ltd., prays that this Honorable Court will suppress and strike from the files those certain interrogatories attempted to be propounded by the said plaintiff to the said defendant, by filing the said interrogatories in the office of the Clerk of the District Court of the United States for the Southern District of Mississippi, Southern Division, at Biloxi, on to-wit, the 12th day of January 1927. And for grounds of such motion, defendant assigns the following:

1. The filing and attempted propounding of the said interrogatories is not warranted by the Acts of Congress governing the practice in the Courts of the United States nor by the settled practice or procedure of the said Courts.

2. The said interrogatories attempt to procure a summary discovery at law in a fashion not contemplated in the Federal practice nor provided for by any statute of the United States.

66 3. The said interrogatories attempt to procure evidence in advance of the trial in a fashion not provided for by the statutes and practice governing the adducing of testimony in the Courts of the United States.

4. The said interrogatories seek to procure the production of papers and documents in advance of the trial, which may not be had under the statutes and practice of the Courts of the United States.

5. The said interrogatories attempt to apply in the United States Court a practice set up by a State Statute and applicable only in the State Court and not in the United States Court.

PELLAN, COWLEY & GRESHAM
AND LEATHERS & SYKES,
Attorneys for the Skandinavia
Insurance Company Ltd., appearing specially for the purpose of making this motion and for no other purpose.

Filed Jan. 22, 1927.

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67 ORDER SUSTAINING MOTION TO STRIKE INTERROGATORIES.

(Title Omitted.)

Present and presiding the Hon. Edwin R. Holmes, District Judge:

This cause coming on to be heard on motion of the Skandinavia Insurance Company, Ltd., appearing specially for the purpose of making said motion, to suppress and strike from the files those certain interrogatories propounded by the plaintiff to the said defendant, Skandinavia Insurance Company, Ltd., filed in the office of the Clerk of this Court at Biloxi, on, to-wit, January 12, 1927; and the Court having duly considered the said

motion and the briefs of the counsel of the parties hereto both for and against said motion, is of the opinion that the said motion to strike said interrogatories should be sustained:

Now, therefore, it is ordered, adjudged and decreed by the Court that the motion of the defendant, Skandinavia Insurance Company, Ltd., to strike from the files those interrogatories filed by the plaintiff to said de-
68 fendant in the offices of the Clerk of this Court at Biloxi, on, to-wit, January 12, 1927, be and the same hereby is sustained; and that said interrogatorie be and the same are hereby suppressed and stricken from the files of this Court.

This the 12th day of February, 1927.

E. R. HOLMES, District Judge.

Filed February 14, 1927.

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69 MOTION TO STRIKE FROM THE FILES THE INTERROGATORIES PROPOUNDED TO THE DEFENDANT BY THE PLAINTIFF, UNDER SECTION 1938 OF THE MISSISSIPPI CODE OF L(... (1598 OF HEMINGWAY'S CODE).

(Title Omitted.)

Pillans, Cowley & Gresham, Mobile Alabama.
Leathers & Sykes, Gulfport, Mississippi, Attorneys for Defendant.

Green, Green & Poter, Jackson, Mississippi, Attorneys for Plaintiff.

OPINION OF THE COURT.

This is an action of law on a policy of insurance against a non-resident corporation.

Section 1398 of the Mississippi Code of 1906 (1598 of Hemingway's Code) provides:

"If the testimony of the party to the suit who resides out of the State be desired by the adverse party, interrogatories to him may be filed in the Clerk's office, and a copy thereof, with notice of filing, shall be given the party, or his attorney or solicitor; and if he fail
70 to answer such interrogatories within a reasonable time, his plea shall be dismissed, if he be plaintiff or complainant, and if he be defendant his plea or answer may be taken off the file and judgment by the default entered or the bill be taken as confessed."

Under the section just quoted, the plaintiff propounded to the defendant, by filing the same in the Clerk's office, elaborate interrogatories which the defendant has moved to strike from the files as unwarranted by the practice in this Court.

The Mississippi Supreme Court has held the section constitutional and applicable to actions at law, as well as suits in equity, and that a corporation can be compelled to answer such interrogatories by its proper officer or agent. Illinois Central Railroad Company v. Sanford, 75 Mississippi, 862, 23 Son. 355.

Similar statutes have been quite commonly enacted by other states in the Union, and frequently have been before the Federal Courts in an attempt to adopt the state practice under the Conformity Act. (Revised Statutes, 914.)

In 1885 the Supreme Court held, in ex parte Fisk, 113 U. S. 713, that a Similar New York Statute, permitting a party to a suit to be examined by his adversary as a witness at any time previous to the
71 trial in an action at law, was in conflict with a provision of Section 861 of the Revised Statutes of the United States, which enacts that the mode of proof shall be by oral testimony in open Court, with certain exceptions, none of which were found to provide for such an examination in advance of the trial as the statute of New York permitted.

The case is directly in point here, but it is contended that subsequent Congressional legislation has made a material change in the ruling therein announced.

In 1892 Congress passed an act entitled, "An Act to provide an additional mode of taking depositions of witnesses in cases pending in Courts of the United States." (Act of March 9, 1892, chapter 14; U. S. Compiled Statutes of 1916, Section 1476.)

The act provides:

"In addition to the mode of taking the depositions of witnesses in cases pending at law or equity in the District and Circuit Courts of the United States it shall be lawful to take the depositions or testimony of witnesses in the mode prescribed by the laws of the state in which the Courts are held."

The latter Statute was considered by the Supreme Court in Hanks Dental Association v. Tooth Crown Company, 194 U. S. 303, and the Court held that it did not repeal or modify Section 861 of the Revised
72 Statutes, or create any additional exceptions to those specified in the subsequent sections by en-

larging the causes or grounds for taking depositions, and is not supplementary to Section 914 of the Revised Statutes.

The Court said:

"In short, the Courts of the United States are not given discretion to take depositions not authorized by Federal law, but in respect to depositions thereby authorized to be taken they may follow the Federal practice in the manner of taking, or that provided by the state law."

The fact that the defendant resides more than a hundred miles from the place of trial does not alter the question.

I conclude that the Mississippi statute in question is not applicable to an action at law in the Federal Courts, and the motion to strike the interrogatories from the files should be sustained. National Cash Register Company v. Leland, 94 Fed. 502; Smith v. International Mercantile Company, 154 Fed. 786.

It is so ordered.

Filed Mar. 11, 1927.

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73 DEMURRER TO DEFENDANT'S MOTION AND PLEA IN ABATEMENT.

(Title Omitted.)

And now comes Morris and Company, plaintiff, and demurs to the defendant's motions and plea in abatement, and for cause of said demurrer assigns the following:

1. That said motion and said pleas in abatement are not verified as required by law; and for other causes to be assigned.

S. C. MIZE,
GREEN, GREE & POTTER,
Attorneys for Plaintiff.

Filed Feb. 21, 1927.

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74 MOTION TO STRIKE DEMURRERS.

(Title Omitted.)

Comes the said defendant and moves the Court to strike from the file the demurrers filed herein by the plaintiff on, to-wit, the 21st day of February, 1927. For grounds of such motion the defendant assigns the following:

1. The demurrers were filed without leave of Court.

2. The demurrers were filed out of time and without securing leave of Court.

3. The demurrers are filed too late.

4. The demurrers are filed only four days in advance of the date fixed for trial on the pleading demurred to, although the pleading has been on file for more than a year.

5. The demurrers are filed out of the time and under circumstances of delay in filing, and the near approach

of trial, that should influence the Courts' discretion against permitting the demurrers to remain on file.

PELLAM, COWLEY & GRESHAM,
LEATHERS & SYKES,
Attorneys for Defendant.

Filed Feb. 23, 1927.

75 At said February Term, 1927, of the Court, came on to be heard the demurrer of the plaintiff, and also the motion of the defendant to strike from the files the plaintiff's demurrer to the defendant's motion to quash and the plea to the jurisdiction, when the following admission was made in open Court:

"By Mr. Pillans, of counsel for the defendant:

I am now in open Court demanding of the plaintiff to know if it be not a fact that the action in the Southern District Court of New York brought by Morris & Company against the Skandinavia Insurance Company, and set up in the plea of lis pendens, has been, since the filing of that plea in this cause, dismissed out of the said Court, and is now no longer a pending litigation.

By Mr. Green:

That is a fact."—

Whereupon the Court made the following orders:

"It appearing to the Court, and plaintiff having admitted in open Court that the suit filed in New York has been disposed of, and, therefore, the demurrer asked to be filed is on presenting a moot question of law to the Court, the Court does not think it ought to be called

upon to pass upon the moot question, and will decline to permit the demurrer to be filed which presents
76 such moot question.

This ..... day of February, A. D. 1927.

(Title Omitted.)

M. B. 6, p. 239.

This matter coming on to be heard on the defendant's motion to strike from the files the plaintiff's demurrer to the defendant's motion and plea to the jurisdiction, which demurrer was filed herein on February 21, 1927, and the Court, having heard counsel pro and con, being of opinion that the said motion should be granted,

Now it is ordered that the said motion be, and it is hereby in all things sustained, and that the said demurrer filed by plaintiff on February 21, 1927, be and it is hereby stricken from the file of the Court and held for naught, and plaintiff is directed to reply thereto.

Ordered and adjudged the 28th day of February, 1927.

E. R. HOLMES,
U. S. Judge.

77 (Title Omitted.)

Upon the motion of the plaintiff, Morris & Company, it is hereby ordered that said plaintiff may file several replications to each of the defendant's pleas in abatement and plea to the jurisdiction, and upon motion of the defendant it is hereby ordered that the plaintiff traverse or admit or otherwise reply to the allegations contained in the motion to quash the process.

Ordered and adjudged, this the 28th day of February, A. D. 1927.

E. R. HOLMES,
U. S. District Judge.

Filed Feb. 28, 1927.

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78 PLEA OF PLAINTIFF THAT DEMURRER BE SUSTAINED.

(Title Omitted.)

Now comes the plaintiff by attorney and by leave of the Court first had and obtained says that the said plea herein interposed of prior suit pending being plea predicted as to the suit in New York is wholly insufficient in law and states no answer to the said declaration because—

(1) Not properly sworn to.

(2) No answer to declaration because the suit therein pending has been brought only in personan and would in no wise interfere with the suit now here brought.

(3) Because the said suit is properly brought as appears by the averants of the declaration.

(4) Because the said suit is no vague and uncertain as that it is no plea.

(5) Because the same appears by the declaration to be no answer thereto whatsoever.

Wherefore the plaintiff prays that the said demurrer be sustained.

GREEN, POTTER & MIZE,
Plaintiff.

Filed Mar. 4, 1927.

79 ORDER.

(Title Omitted.)

This matter coming on to be heard on motion of the plaintiff to be allowed to file another demurrer to the plea of the defendant, a previous demurrer having been stricken from the files, and the plaintiff having been directed by the Court to reply to the pleas of the defendant, and it further appearing to the Court that the suit filed in New York has been disposed of, it is ordered that the motion of the plaintiff to file a demurrer to said please be denied, and upon motion of the defendant, the plaintiff is hereby ordered to traverse, admit, or otherwise reply to the allegations contained in the pleas and motion to quash of the defendant.

It is further ordered that, after the plaintiff has replied to said pleas and motion quash, and after the parties are at issue thereon, said motion and pleas to be consolidated and heard together on the issue or issues therein presented.

This 4th day of March, A. D. 1927.

E. R. HOLMES,
U. S. District Judge.

Filed Mar. 4, 1927.

80 ANSWER OF PLAINTIFF TO MOTION TO QUASH RETURNS OF PROCESS ON DEFENDANT.

Morris & Company,

vs. 489-Law.

Skandinavia Insurance Company, Ltd.

Comes Morris & Company, a corporation, herein called the plaintiff, and first expressly reserving all exceptions by it heretofore had and taken, for answer unto the motion herein made by the Skandinavia Insurance Company, Ltd., herein called defendant, to quash the return on the process issued in the State Court, and lawfully served upon the defendant, says:

I.

Beginning in 1857, the Statutes of the State of Mississippi expressly provided that corporations which exist by the laws of any other state of the Union, by the Acts of Congress, or by the laws of any foreign county, may sue in the State of Mississippi by their corporate names, and shall also be liable to be sued or proceeded against by attachment or otherwise, as individual non resident debtors may be sued or proceeded against (Code 1857, p. 297, Art. 30), and this has continued to be and is still the law of said state (Code 1871, Sec. 2416; Code 1880, Sec. 1042; Code 1892, Sec. 849; Code 1906, Sec. 914; Hemingway's Code, Section 4088), and, in addition, by section 4093 of Hemingway's Code, continu-

81 ously in effect for many years, that such corporations found doing business in this state shall be subject to suit in Mississippi to the same extent

that corporations of the State of Mississippi are subject to suit, whether the cause of action accrued in this state or not.

These sections of law were judicially construed in Pullman Palace Car Co. vs. Lawrence, 74 Mississippi, 782, at the March Term, 1897, of the Supreme Court of the State of Mississippi, which said Court was and is the highest Court of law having jurisdiction in said State, and said construction made all corporations, and especially this defendant, liable to such suit; and this construction was continued in the case of Vicksburg, Shreveport & Pacific Railway Company v. Forcheimer, 74 Southern, 419, 113 Mississippi, 531.

And said defendant, well knowing the law of the State of Mississippi, and the judicial construction uniformly thereon placed, desiring to do business in Mississippi and to reap the benefits therefrom, in pursuance of the law of the State of Mississippi, did upon the 27th day of March, 1923, make, execute and deliver to
82 the Insurance Commissioner of the State of Mississippi, a certain power of attorney, a copy of which is hereto annexed, marked Exhibit "A", and which was duly filed in the office of the Insurance Commissioner of the State of Mississippi on the 31st day of March, 1923, whereunder and whereby said defendant appointed T. M. Henery, Insurance Commissioner, its true and lawful attorney in fact, and contracted and agreed that upon said Henery process might be served in any action or legal proceeding against said defendant, and said defendant did agree that any such process so served upon the said T. M. Henery, as Insurance Commissioner, against it, the said defendant, should have the same force and validity as if served upon the Company, and did further make, execute and deliver a cer-

tain power of attorney to Robert C. Wilkerson, a resident and citizen of the State of Mississippi, and a local Insurance agent therein, (a copy thereof is filed herewith as Exhibit "a" as part hereof) whereby said defendant did authorize the said Wilkerson to accept and acknowledge service of process whether mesne or final in any action or proceeding against any said company in any of the Courts of the State of Mississippi and thereunder and thereby said defendant admitted

83 and agreed that such service should be taken and held to be valid and sufficient in that behalf, the same as if served upon said Company, according to the laws and practice of said state or any other state, and that by said instrument said defendant did then and there relinquish all claims or rights of error by reason of the manner of such service so then and there to be made.

After said March 31, 1923, there was regularly brought in the Circuit Court of Harrison County, Mississippi, this certain action against the said defendant, and in said Court there was regularly issued the process lawfully in said pending suit against the said defendant, and in accordance with law this plaintiff paid the costs to the sheriff of Hinds County requisite and necessary to have said service made upon said Insurance Commissioner of the State of Mississippi, a service upon the said defendant, in manner and form as said defendant had agreed that said service might be made, and in faith upon such agreement, and that upon the power so conferred by said defendant this plaintiff paid, laid out and expended the necessary fees for such service, which otherwise it would not have done, aggregating two dollars, under Section 5034 of Hemingway's Code, and that there-

upon said Insurance Commissioner did transmit
84 the same to the said defendant in the State of New York, which said process was by the said defendant accepted and received, as appears by Exhibit "B" hereto annexed and made part hereof, and, thereafter, when said service was so made and delivered, said defendant came into said Court and by its appearance thereby waived and relinquished all errors of every kind and character, and that thereby plaintiff says that said defendant cannot make said motion to quash for the reasons therein alleged, or for any other reason.

II.

And for another answer, reserving an aforesaid at all times, plaintiff denies that the said defendant can in this case appear specially, because it says that when said service was made upon said Insurance Commissioner by the Sheriff of Hinds County, as hereinbefore set out, it, the said defendant, was bound thereby, having agreed to accept and receive said service as a personal service, and having agreed that it would do so, and that thereafter upon the 25th day of February, 1926, the said defendant did solemnly swear, as shown by Exhibit "c" hereto annexed, that it, the said defendant, accepts in good faith
the terms and obligations of the insurance laws
85 of the said state, as a part of the consideration of its license, and ratified thereby and approved that theretofore done; and that under the law of the State of Mississippi it was expressly provided by section 2953 of Hemingway's Code, that in case a motion to quash was sustained, that thereunder it would constitute a general appearance to the next term, and plaintiff says, as thereunder provided thereby this plaintiff became entitled to proceed against the said defendant as being in Court

III.

And for another and further answer unto said motion, saving and expressly reserving, as aforesaid, plaintiff denies that defendant could herein appear specially for any purpose, and denies that it did appear specially for any purpose, and denies that it did appear specially for any purpose, and denies that there is no jurisdiction over the person of the defendant; admits plaintiff is a non resident of Mississippi, but is a corporation of the State of Louisiana, vouchsafed by the law of the State of Mississippi a right to sue therein, and denies for the purpose of this motion that the defendant is a non-
86 resident of the State of Mississippi, and denies that defendant was not subject to the process upon which it served in Mississippi, both in virtue of the appointment of the Insurance Commissioner as hereinbefore set forth and of said local agent, in accordance with the provisions of Section 5069 of Hemingway's Code, said defendant having appointed Robert C. Wilkerson, a local insurance agent as its true and lawful attorney for service of process, and thereunder and thereby said Wilkerson became and was so authorized to so accept and receive said service.

Plaintiff denies that the contract here sued on was to be performed wholly without the State of Mississippi. On the contrary, performance of said contract consisted in a payment of money on an insurance policy and was solvable in Mississippi to the extent of $50,000.00 in United States gold. Plaintiff denies that after the loss thereunder the obligation thereon was without the State of Mississippi, and denies that the cause of action was without the State of Mississippi, and denies that the defendant was not, prior to and at the time of the accru-

al of said cause of action and is not now doing business in the State of Mississippi, and denies that defendant was not found in the State of Mississippi; denies that defendant was not amendable to the service of
87 process of the Courts of the State of Mississippi so there made, denies that defendant has any alleged rights as averred in said motion, and denies that if there be such rights, they have not been waived, in manner and form as hereinbefore set forth, and denies that defendant has not formally or otherwise appeared in this Court, and submitted itself to the jurisdiction of this Court.

IV.

And expressly saving and reserving as aforesaid, for further answer to said motion to quash, plaintiff says that said defendant, well knowing the law of the State of Mississippi and the settled judicial construction thereof, constituted and appointed by Section 5069 of Hemingway's Code, subdivision 4, Robert C. Wilkerson its true and lawful agent for service of process in the State of Mississippi, and did then and has continuously since, from year to year, made payment to the said Wilkerson for his services in the State of Mississippi, which were to be performed solely and exclusively in the State of Mississippi, and were intended thus so to be by the defendant.

And further plaintiff says, that, in accord-
88 ance with the laws of the State of Mississippi, the defendant entered the State of Mississippi, to do business therein, in manner and form as by the laws of the State of Mississippi provided, and did accept in good faith the terms and conditions of the insurance laws of the State of Mississippi from year to year, as

will more fully appear by the official records, reference to which is hereby made, and that after so entering the said State of Mississippi and agreeing to comply with its said laws, then and there in the State of Mississippi certain insurance companies doing business in the said State of Mississippi conspired each with the other to violate the laws of the State of Mississippi by forming a trust and combine, and there so did, and in virtue of their having so done, thereupon Honorable Stokes v. Robertson, State Revenue Agent of the State of Mississippi, filed in the Chancery Court of Hinds County, Mississippi, a certain bill of complaint, styled Stokes v. Robertson, State Revenue Agent, versus The Aetna Insurance Company, et al., and therein defendant was one of those so thus alleged to have violated the laws of the State of Mississippi under and by virtue of those things had and done, and that said suit being so thus brought, the defendant therein was
89 served with process and did enter its appearance and did not submit to the jurisdiction of the said Chancery Court, as then and there doing business in the said State of Mississippi, and did then and there in the State of Mississippi employ for its defense in said suit certain solicitors, and among those solicitors did employ in the City of Jackson the Honorable J. B. Harris and the Honorable W. H. Watkins, and in the City of Vicksburg the Honorable R. L. McLaurin, and that said solicitors so thus employed did then and there for the said defendant appear in the Courts of the State of Mississippi and did defend said suit so about defendant brought, and that said defendant did through its solicitors cause much proof to be taken and many acts to be done for the defense of the said suit in the State of Mississippi, and did argue and present in the State

of Mississippi to the Courts of the State of Mississippi divers defenses, both in the Chancery Court of Hinds County and the Supreme Court of the State of Mississippi, and did in manner and form as by said record appears litigate to and with the State of Mississippi, in the State of Mississippi, about whether or not the defendant had, in its business done, violated the anti-trust laws of the State of Mississippi by those things therein done by said defendant.

90 Finally after several years of litigation it was finally adjudicated by the Supreme Court of the State of Mississippi that said defendant had not violated the laws of the State of Mississippi by anything done in said State.

Furthermore, when said suit was originally filed said defendant assumed to withdraw from the State of Mississippi, as having theretofore done business in the State of Mississippi, and then and there assumed to so withdraw along with certain other companies doing an insurance business, and thereafter to coordinate its course to and with the action of the direct writing insurance companies, the said defendant undertook to and did return into the State of Mississippi for the purpose of doing business and did, as appears by "Exhibit D" hereto, upon the 16th day of March, 1923, declare its desire for and make application to re-enter the State of Mississippi for transacting a fire reinsurance business, under the treaties with direct writing companies writing business in the State of Mississippi, which otherwise the said defendant would have remained unable to do. That thereupon O. Ehmann, acting for and on behalf of defendant asked whether or not it would be sufficient to file in the State of Mississippi with the Commissioner of Insurance for the State of Mississippi an annual

statement for the year ending December 31, 1922 and pay in connection therewith the fees necessary,
91 thereupon, as appears by Exhibit "A-1" upon the 27th day of March, 1923, defendant then and there executed and caused to be delivered in the State of Mississippi a certain power of attorney, which pursuant to the act done by the said defendant was filed at its instance and request in the State of Mississippi, and thereunder defendant constituted said Henery, Commissioner, its lawful attorney in the State of Mississippi, upon whom in said State all processes of law against said corporation might be served, under and in accordance with the provisions of Mississippi law, both then in effect and those thereafter to be passed.

Said defendant further thereby expressly agreed in the State of Mississippi that suit might be brought and did acknowledge the power of said Henery, Commissioner, to receive summons, and did personally file, or cause to be filed, said power of attorney in the State of Mississippi.

Said defendant did further then and there, acting by said Ehmann, certify to the State of Mississippi that Robert C. Wilkerson, as its special agent and attorney in the State of Mississippi and lawfully appointed, was authorized and empowered to accept and receive service of all processes whether mesne or final, in
92 any action or proceeding against said defendant in the State of Mississippi, and said defendant agreed that such service was valid, and waived and relinquished all claim or right or error by reason thereof.

Said Ehmann, acting for said defendant, did deliver in the State of Mississippi by letter annexed hereto as a part hereof, (a) certificate of compliance by said defendant from the New York Insurance Department,

(b) an annual statement as at December 31, 1922, executed and sworn to on the regular blank, (c) certificate of deposit from the New York Insurance Department, (d) appointment of said Wilkerson as local agent, (e) appointment of Insurance Commissioner as attorney, (f) application for admission to do business in Mississippi, and (g) check in payment of license fees imposed by the State of Mississippi aggregating $230.00. That all of these acts were done in the State of Mississippi, and said payment was made in the State of Mississippi, is shown by Exhibit (e).

That thereafter upon July 17, 1923, said defendant likewise delivered to said T. M. Henery, Commissioner, in the City of Jackson a certain return, showing the amount of certain payments made in the State of Mississippi.

That upon February 27, 1924, said defendant
93 did make delivery in the city of Jackson to said Insurance Commissioner of the State of Mississippi of (a) annual statement, (b) annual statement, (b) a statement (c) application for agent's license, (d) a tax statement, and did then and there pay in the State of Mississippi the sum of $229.00 as and for taxes due to the State of Mississippi. And at said time said defendant did recite that there were no taxes by it due on premiums on policies written in the State of Mississippi, because although said defendant had reinsured property situated in Mississippi, yet it had restricted its treaties to companies who had paid said tax upon said premiums and did not deduct the same from their tax reports, and consequently the said defendant represented to the said state that there were no such taxes due by it on that portion of the business done in Mississippi. Copies of said instruments are annexed hereto as Exhibit (f) and made part hereof.

That likewise defendant on February 26, 1925, did deliver in the State of Mississippi and did make payment in the State of Mississippi, that is to say, did deliver the annual statement, a statement and application for an agent's license, a tax statement, and
94 did pay $229.00, and did likewise at the same time a call attention to non liability for premium taxation, for the reason just hereinbefore set forth as to the prior year.

That in addition thereto said defendant caused to be made an abstract of its published statements, as required by law, and then and there caused the same for and on its account, as by law required, to be published in a newspaper in the State of Mississippi, and thereafter did pay, lay out and expend the necessary fees.

V

That likewise during the years 1923, 1924 and 1925 defendant filed complete statements as shown by Exhibits "I", "H" and "G", and during each of said years, as therefrom appears, wrote large lines of reinsurance to and with direct writing companies lawfully admitted to do business in Mississippi, which, but for defendant's qualification in Mississippi, said defendant could not have so done, and that from said business so thus done with said direct writing companies the said defendant received gross premiums of $7,739.10 for the gross business written of $535,666.00, and paid losses aggregating $10,647.16, as "business in the State of
95 Mississippi during 1923", and likewise in 1924, gross risks written aggregating $2,266,256.00, for which it collected premiums aggregating $29,188.26, and paid losses aggregating $16,216.00, all reported as

business in the State of Mississippi during 1924," and likewise reported gross business in 1925 of $4,357,697.00, with gross premiums received of $64,870.58, with gross losses paid of $14,365.51, all as business done in the State of Mississippi.

Plaintiff says that said defendant could not have done said business in the State of Mississippi, as by it reported, with said direct writing companies, except upon condition that said defendant would be subject to suit in Mississippi, and that said direct writing companies would have been authorized to cede to said defendant said business, except said defendant should have so qualified and should have so agreed; and that when said defendant well knew that this was the condition upon which it was authorized to do business, it received said business during 1923, 1924, 1925 and continued to receive said business during 1926, and up to the present time, and that said defendant, thus consenting to the said condition contained under the laws of the
96 State of Mississippi, is now estopped and precluded, and has waived any right of objection, having realized large profits from its said business, and thereunder and thereby, while retaining the same and participating in said business, it cannot now repudiate condition upon which said right so thus to be in Mississippi was obtained.

VI.

And for another and further answer, expressly reserving as aforesaid, unto said motion so made, plaintiff says that there was pending in the United States District Court for the Southern District of New York to be held in the City of New York, a certain suit by this

plaintiff against this defendant, which was in personam in Admiralty, and that the relief therein sought was and continued to be a money judgment on the insurance policy herein sued on. That plaintiff therein made demanded judicially on the same cause of action as is hereunder asserted, and in said suit so thus brought defendant personally appeared and submitted to the jurisdiction of said District Court, and said controversy was then and there being litigated on the merits, and that in said Court said suit was depending between the parties at the time of the pendency in this Court of this cause, and that thereupon while this was so pending,

97 the plaintiff upon the transitory cause of action existing under the said policy of insurance, in manner and form as set out in the declaration, sued the defendant in this action and thereupon in this Court said defendant filed its certain plea of prior suit pending in the District Court of New York, as hereinbefore set out, in said plea averring that this suit so brought ought to be abated and stayed, because of the averment that this plaintiff had theretofore in the District Court of the United States for the Southern District of New York, in the City of New York, State of New York, on the 15th day of November, 1921, impleaded defendant as aforesaid, which said action so pending, defendant averred, and at that time remained pending in said District Court of the United States, undetermined, as would appear by profert thereof, which defendant offers to make. By said plea defendant averred that this plaintiff brought said suit, and that the parties hereto were identical with the parties to said New York suit, and that by said plea defendant prayed for an order staying and suspending this suit until said action in New York should be determined; and plaintiff says in virtue of said

plea so thus filed as election was presented to
98 plaintiff whether to proceed in this cause, or in the District Court of the United States in that cause, and plaintiff says that it elected to proceed in this cause against the defendant, and caused to be dismissed without prejudice, at plaintiff's cost, in virtue of said plea of prior suit pending, the said suit pending in the District Court of the United States in New York, and that thereunder and thereby having been so thus compelled to dismiss said suit in New York, that this defendant by the filing of said plea and by the dismissal of said New York suit is estopped and precluded from in any way making this motion to quash, and if not, then the filing of said plea in this Court is a waiver of said motion to quash, being inconsistent therewith.

VII

And for a further answer, reserving as aforesaid plaintiff says that defendant hath appeared generally in this Court, and so having done, is estopped from relying upon said motion.

VIII

And for another and further answer to said motion, expressly reserving as aforesaid, plaintiff denies that a question of this character can be lawfully by
99 motion raised; and further says that said motion, not being properly sworn to, it cannot be entertained, as the same is wholly irregular.

And that pursuant to due authority conferred by the said defendant, process was served on the resident agent, returnable to this term of this Honorable Court, and

that under the agreement hereinbefore set forth, the said defendant waived expressly all errors in the manner of service, and agreed to be thereby bound.

Therefore, in reply to said motion, plaintiff says that the same was not originally well taken, and should be therefore, overruled, but if originally well taken, defendant is estopped from relying thereon, but if not estopped from relying thereon, then that defendant has waived the said motion by those things hereinbefore set out, and by other acts in open Court done.

Wherefore plaintiff says that the cause should forthwith proceed and said motion be denied.

MIZE & MIZE,
JNO. M. LEE,
GREEN, GREEN & POTTER

100 State of Illinois,
County of Cook,
City of Chicago.

Personally appeared before me, the undersigned Notary Public, John M. Lee, to me personally known, and having been by me first duly sworn, on oath state that he is the attorney for Morris and Company, plaintiff in the above entitled suit, and duly authorized to make this affidavit, and states upon his own knowledge that those things in the foregoing answer stated to be true are true, upon affiant's own personal knowledge, and those things therein stated upon information and belief affiant verily believes to be true, as therein stated, upon his own personal information and belief.

GARNER W. GREEN.

Sworn to and subscribed before me, this 7th day of May, 1927.

LOUISE MELTON,
Notary Public.

Answer filed May 13, 1927.

101 (Title Omitted.)

And now comes plaintiff, Morris & Company, after its demurrer to plaintiff's pleas in abatement has been overruled, and exception taken, and prays leave of the Court to file certain replications to said pleas in abatement, copies of which are annexed hereto and made part hereof, and that plaintiff is advised and believes that it has just grounds to traverse the several motions proposed to be traversed by it, in the several replications hereto annexed, and that the several matters sought to be pleaded by confession and avoidance in the said replications are true in substance and in fact.

Wherefore, plaintiff prays leave to have the annexed replications, with the exhibits filed.

MIZE & MIZE,
JOHN M. LEE,
GREEN, GREEN & POTTER,
Attorneys.

102 State of Mississippi,
County of Hinds,
City of Jackson.

Personally appeared before me, the undersigned authority, the within named Garner W. Green, who having been by me first duly sworn, on oath says: that he is one

of the attorneys for Morris & Co., in the above entitled cause, which is a corporation and which is absent from the State of Mississippi, and makes oath that the matters of fact set forth in the annexed replications are true and correct, as therein set out, in substance and fact.

GARNER W. GREEN.

Sworn to and subscribed before me, this 7th day of May, 1927.

LOUISE MELTON,
Notary Public.

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103 REPLICATIONS.

(Title Omitted.)

Comes plaintiff by attorney, and first saving and reserving all manner of objection and exception heretofore herein had and taken, by leave of the Court first had and obtained, for replication says:

I.

Said Morris and Company, hereinafter called "plaintiff," denies that this Court is without jurisdiction of the person of the defendant, and denies that there was any attempted service of process on said defendant, and denies that said service of process is abortive and void for any reason; and denies that for purposes of this suit the defendant is not a citizen of the State of Mississippi, and denies that for purposes of this suit it is a corporation and citizen of the Kingdom of Denmark.

Plaintiff admits the original contract was
104 executed without the State of Mississippi, but denies that said contract was to be performed wholly without the State of Mississippi, and denies that the cause of action arose without the State of Mississippi. Plaintiff denies that defendant was not doing business in the State of Mississippi at the time this suit was brought, and denies that it was not found within the State of Mississippi, and denies that it was not amendable to service of summons made on it in this case, and denies that it has any rights in the premises, but denies that, if it has such rights, it has not waived the same by a voluntary appearance, or otherwise, and of this plaintiff puts itself upon the country.

II.

And for another and further replication, reserving as aforesaid, leave to file which has been expressly had, plaintiff says that under the statute laws of the State of Mississippi foreign corporations may sue and be sued therein, even though the cause of action sued on did not arise within the State, and that this statutory law, long prior to the action of the defendant hereinafter set out, had become a fixed rule by decisions of the
105 Supreme Court of the State of Mississippi, first announced in 1897 in Pullman Palace Car Company v. Lawrence, and thereafter reaffirmed in 1917 in Vicksburg, Shreveport & Pacific Railway v. Forcheimer, and that this requirement of the State of Mississippi that foreign corporations should so be subject to suit had been many years before defendant's entry into Mississippi a fixed principle of Mississippi jurisprudence; and that well knowing the law of the State of Missis-

sippi, and desiring to do business in the State of Mississippi, in pursuance of and in accordance with the statute law of the State of Mississippi, defendant applied to be admitted to do business in the State of Mississippi, and did as part of said application then and there execute and deliver in the State of Mississippi power of attorney to T. M. Henery, Insurance Commissioner, duly filed by said defendant in the office of the Insurance Commissioner, whereunder and whereby it, the said defendant, did constitute and appoint said Henery and his successors in office its true and lawful attorney, and did contract and agree that process in any legal proceeding might be served upon it by service upon the said T. M. Henery, and that said service would have the same force and effect as if served upon the said Company personally as shown by Exhibit A-1 and that in pursuance thereof thereafter this suit was regu-

106 larly brought in Harrison County, Mississippi, in a Court having jurisdiction, and that said Court thereupon issued its certain process lawfully in said cause then pending by this plaintiff against the Skandinavia Insurance Company, Ltd., and in accordance with law this plaintiff paid the costs requisite to have said service made upon the Insurance Commissioner, aggregating $2.00, and that said service upon said defendant was so made upon the faith of this law in the State of Mississippi, and that thereupon said writ was transmitted to said defendant by the Insurance Commissioner of the State of Mississippi, and received by the said defendant without question; and that in coming into the State of Mississippi the said defendant further contracted and agreed that defendant would appoint Robert C. Wilkerson its local attorney for service in the State of Mississippi, as shown by Exhibit "a-2" here-

to annexed, and that it did contract and agree that service so made upon said local agent, whether mesne or final, in any action against said company in any of the Courts of the State might be made, and did thereby admit and agree that such service so made should be taken and held to be valid and sufficient, the same as if served upon the company personally, and all claims and rights of error by reason of the manner such service were thereunder expressly waived, and that
107 thereunder said plaintiff says that when said writ was so issued and so served and received in accordance with the statutes of the State of Mississippi, the said defendant became bound thereby. Copies of all of said written evidence are annexed and made a part hereof, and this the plaintiff is ready to verify.

III.

And for further replication, expressly saving and reserving as aforesaid, leave to file which is heretofore obtained, said plaintiff says that said defendant by its own voluntary act contracted and agreed that it might be sued within the State of Mississippi, as shown by Exhibit E, D, C, J, and exhibits to the next preceding replication, marked A-1 and A-2, and prayed to be taken as a part hereof; and that having so thus agreed defendant is estopped, and plaintiff ought not to be precluded, and this plaintiff is ready to verify.

IV.

And for another replication, expressly saving and reserving, leave to file which has been expressly had, plaintiff says that at the time of the filing of said plea to the

jurisdiction of the person of said defendant, said defendant made a general entry of appearance by filing to and with said plea to the jurisdiction of the person a plea of former suit pending, which said plea of
108 former suit pending admitted the jurisdiction of this Court, and thereby waived any right to object to the jurisdiction of this Court of the person of the defendant, admitting that there was in this cause a valid suit pending in this Court, and calling for affirmative relief by this Court in virtue thereof, all of which more fully appears by the records pleas in this Court, whereunto reference is hereby made, and the same made a part hereof, but not copied herein to save prolixity; and thereby said plaintiff says it ought not to be precluded, and all of this it is ready to verify.

V.

And for another and further replication, expressly saving and reserving, leave to file which being expressly granted, said plaintiff says that said defendant has herein heretofore filed a certain motion to strike a demurrer interposed by the plaintiff from the files, and that said demurrer was filed on the 21st day of February, 1927, and did not restrict the appearance thereby had to a special appearance, and that thereby a general appearance was entered, and any defect of jurisdiction of the person expressly waived, said motion appearing of record herein. It is not copied, but reference thereto is expressly made; and thereby plaintiff says it ought not to be precluded, and this it is ready to verify.

109 VI.

And for another and further replication, expressly saving and reserving, leave to file which being express-

ly given, said plaintiff says that heretofore the said defendant in this cause filed a motion to strike certain interrogatories therein assumed to be filed by the plaintiff from the files of this Court, and did therein submit to this Court divers arguments in writing in support of its said motion, and that said motion, with that thereunder done, constituted and was a general appearance of the defendant, and by the implication of the jurisdiction of this Court in its behalf waived any defect of jurisdiction over the person of defendant, all as will more fully appear from the record, and thereby plaintiff ought not to be precluded, and this it is ready to verify.

VII.

And for another and further replication, first expressly saving and reserving as aforesaid, leave to file which being expressly given, plaintiff says that under and by virtue of the Code, Section 5068, defendant con-
110 tracted to become subject to all laws of the State of Mississippi applicable to the transaction of business in Mississippi by foreign insurance companies and their agents, and that by said laws of the State of Mississippi, it was then and has been at all times since expressly provided by Section 2953, that a motion to quash a summons of citation of service thereof should constitute and be and an appearance generally of the defendant to the succeeding term of Court, and thereunder and thereby plaintiff says that defendant has entered its appearance, and thereby plaintiff ought not to be precluded from so prosecuting its suit, and this the plaintiff is ready to verify.

VII.

And for another and further replication, leave to file which has been expressly had, and all prior rights reserved as hereinbefore set forth, plaintiff says that defendant filed in this certain cause its certain plea, numbered, 2, which was and in a plea of prior suit pending, and that at the time of the filing of this suit in this Court the plaintiff had heretofore filed in the District Court of the Southern District of New York its certain action in Admiralty on this precise policy here sued on against this precise defendant, and that in said Court in said suit the said defendant was then and there personally present and defending said suit, and that being then and there so present and defending said suit, said suit was proceeding in accordance with the rights of the several parties, and that while so thus proceeding this plaintiff filed suit in this Court, and thereupon in answer to this suit so filed in this Court the said defendant filed its plea of prior suit pending, and averred therein that it, the said defendant, ought not to be heard in this action, but that the same ought to abate and be stayed, because said defendant by said plea said that this plaintiff had theretofore in the Honorable District Court of the United States for the Southern District of New York held in the City of New York in the State of New York on the 15th day of November, 1921, impleaded the said defendant in a personal action in Admiralty for the same cause in the declaration aforesaid above mentioned, and seeking the same relief, viz., a money judgment; and therein set out further that said action is said New York Court still remains depending and undetermined, and that the said plaintiff is the

111

same as the plaintiff in said New York suit, and
112 the defendant is the same defendant as in the New York suit, and that said District Court of the United States, of New York, has and had jurisdiction of the action herein sought as brought by the plaintiff, and prayed that this Honorable Court will make and enter an order that this suit be stayed and suspended and respited until said action so pending as aforesaid in the District Court of the United States for the Southern District of New York should have been determined, and plaintiff says that it then and there by so filing said plea of prior suit pending, the said defendant waived this plea to the jurisdiction of the person of the defendant by invoking the jurisdiction of the Court to stay the said suit. And thereby plaintiff ought not to be precluded and this the plaintiff is ready to verify.

IX.

And for another and further replication, all rights being reserved as aforesaid, and leave to file being expressly had, plaintiff says that heretofore it instituted in the District Court of the Southern District of New York in the City of New York, a certain suit in Admiralty against this defendant for a money judgment, and that after so thus instituting said suit in instituted the said suit now here pending, and that in this said suit now here pending the said plaintiff sued the said
113 defendant in this Court while the said defendant was defending the said suit in the New York Court, and personally subject to jurisdiction, and that upon the service of this cause, the said defendant then and there appeared and filed this second plea and set up that this suit now herein pending ought to be abated

and stayed, because said defendant said that the plaintiff herein theretofore by the District Court of the United States for the Southern District of New York, State of New York, on the 15th day of November, 1921, impleaded the said defendant in a personal action in Admiralty for the same cause of action as is herein set out, seeking a money judgment against defendant, and that said action still remains depending and undetermined, as would appear by a duly authenticated copy, wherefore profert was tendered, and that by said plea said defendant further averred the identity of plaintiff and defendant as parties to said New York litigation, and averred that said New York Court had jurisdiction, and averred that by reason thereof that this Honorable Court should make an order to suspend and respite this action until the said New York Court determined said cause; and that upon the said plaintiff being so confronted with said plea of prior suit pending, the said plaintiff did then and there by virtue thereof dismiss the said
114 suit in said State of New York, and did so dismiss the said suit by reason of the plea so herein filed, and having elected thus to proceed in this suit and dismissed the said New York suit at the instance of the said defendant, the said defendant is estopped from urging the dismissal of this suit; and thereby plaintiff ought not to be precluded, and this the plaintiff is ready to verify.

V

And for another and further replication, leave to file which has been had, with all rights reserved, plaintiff says that defendant cannot enter a plea, setting forth want of jurisdiction of the person of the said defendant,

because plaintiff says that beginning 1857 the statutes of the State of Mississippi expressly provided that corporations which exist by the laws of any other State of the Union, by the acts of Congress, or the laws of any foreign country, may sue in the State of Mississippi by their corporate names, and shall also be liable to be sued or proceeded against by attachment or otherwise, as individual non-resident debtors may be sued or proceeded against, (Code 1857, p. 297, Art. 30), and this has continued to be and is still the law of said State, (Code 1871, Sec. 2416; Code 1880, Sec. 1912; Code 1892, Sec. 849; Code 1906, Sec. 914; Hemingway's Code, Sec. 1088), and in addition, by Section 4023 of Hemingway's Code continuously in effect for many years, that such corporations found doing business in this State shall be subject to suit in Mississippi to the same extent that corporations of the State of Mississippi are subject to suit, whether the cause of action accrued in this State or not.

115

These sections of the law were judicially construed in Pullman Palace Car Co. v. Lawrence, 74 Miss. 782, at the March Term, 1897, of the Supreme Court of the State of Mississippi, which said Court was and is the highest Court of law having jurisdiction in said State, and said construction made all corporations, and especially this defendant, liable to such suit; and this construction was continued in the case of Vicksburg, Shreveport & Pacific Railway Co. v. Porcheimer, 74 So. 419, 113, Miss. 531.

And said defendant, well knowing the law of the State of Mississippi, and the judicial construction uniformly thereon placed, desiring to do business in Mississippi and to reap the benefits therefrom, in pursuance of the law of the State of Mississippi, did upon the 27th

day of March, 1923, make, execute and deliver
116 to the Insurance Commissioner of the State of Mississippi a certain power of attorney, as appears by Exhibit "a" to answer to motion, annexed to said answer, and made part hereof be reference, and which was duly filed in the office of the Insurance Commissioner of the State of Mississippi on the 31st day of March, 1923, whereunder and whereby said defendant appointed T. M. Henery, Insurance Commissioner, it true and lawful attorney in fact, and contracted and agreed that upon said Henery process might be served in any action or legal proceeding against said defendant, and said defendant did agree that any such processes so served upon the said T. M. Henery, as Insurance Commissioner against it, the said Defendant, should have the same force and validity as if served upon the company, and did further make, execute and deliver a certain power of attorney to Robert C. Wilkerson, a resident and citizen of the State of Mississippi, and a local insurance agent therein, whereby said defendant did authorize the said Wilkerson to accept and acknowledge service of process whether mesne or final in any action or proceeding against said company in any of the Courts of the State of Mississippi, and thereunder and thereby said defendant admitted and agree that such service should be taken and held to be valid and sufficient in that behalf, the same as if served upon said company according to the laws and practice of said State
117 or any other State, and that by said instrument said defendant did then and there waive and relinquish all claims or rights of error by reason of the manner of such service so then and there to be made.

After said March 31st, 1923, there was regularly brought in the Circuit Court of Harrison County, Mis-

sissippi, this certain against the said defendant, and in said Court, there regularly issued the process lawfully in said pending suit against said defendant, and in accordance with law this plaintiff paid the costs to the Sheriff of Hinds County requisite and necessary to have said service made upon said Insurance Commissioner of the State of Mississippi, as a service upon the said defendant, in manner and form as said defendant had agreed that said service might be made, and in faith upon such agreement, and that under the power so conferred by said defendant this plaintiff paid, laid out and expended the necessary feed for such service, which otherwise it would not have done, aggregating two dollars, under Section 5031; and that thereupon said Insurance Commissioner did transmit the same to the said defendant in the State of New York, which said process was

118 by the said defendant accepted and received, as appears by Exhibit "b" to Answer to Motion, annexed to said Answer, and made part hereof by reference, and thereafter when said service was so made and delivered said defendant came into Court by its express agreement, and waived and relinquished all errors of every kind and character, and that thereunder this plaintiff caused to be served a writ of the defendant's resident agent, returnable to this term of the Court, and that thereunder and thereby jurisdiction now exists in this Court to hear and determine this cause, and this the plaintiff is ready to verify.

MIZE & MIZE THOMPSON,
GREEN, GREEN & POTTER.

119 REPLICATION TO DEFENDANT'S SECOND PLEA IN ABATEMENT.

(Title Omitted.)

And now comes plaintiff, Morris and Company, and for plea to defendant's second plea in abatement says that said plea should not avail said defendant for the reason that, heretofore, to-wit: on the 22 day of April, 1926, said plaintiff, Morris & Company dismissed without prejudice the said suit mentioned therein, a certified copy of said decree being heretofore attached and prayed to be considered a part hereof as fully as if copied herein, and that the plaintiff is ready to verify.

Wherefore, it prays judgment, etc.

JOHN M. LEE,
MIZE & MIZE,
GREEN, GREEN & POTTER,
Attorneys for plaintiff.

Let the foregoing replications be filed.

E. R. HOLMES,
Judge.

Motion and Replications to Pleas in Abatement. Filed May 13, 1927.

Note: The exhibits referred to in answer of plaintiff to defendant's motion to quash and in the replications filed by plaintiff were introduced in evidence on the trial, as will be shown hereinafter.

120 SPECIAL APPEARANCE AND PLEAS TO JURISDICTION.

(Title Omitted.)

Comes the said Skandinavia Insurance Company, Limited, and appears specially for the purpose of filing the following pleas to the jurisdiction, filed to the second or new count of the complaint of said Plaintiff, added by amendment; and this special appearance is for no other purpose.

(1) And the said Skandinavia Insurance Company, Limited, says and shows to this Honorable Court that this Court is without jurisdiction of the person of it, the said defendant, because the attempted service of process on it was and is abortive and void in the first instance, for that it appears from the declaration filed herein in the first instance by the said plaintiff, that the plaintiff is not a resident of the State of Mississippi but is a Corporation organized and existing under the laws of and is a citizen and resident of the State of Louisiana; that the defendant is not a citizen of

121 the State of Mississippi but is a corporation and citizen and resident of the Kingdom of Denmark; that the contract sued on was made without the State of Mississippi and was to be performed wholly without the State of Mississippi; and that the cause of action, if any there be arose without the State of Mississippi. And defendant avers that it was not doing business in the State of Mississippi at the time that this suit was brought; that the said defendant was not found within the said State; that the defendant was not amenable to the service of summons attempted to be made on it in this case; and that it has not waived its rights in the premises by voluntary appearance or otherwise.

Wherefore defendant prays judgment of the said attempted service of summons, that it be quashed and set aside and that the case be dismissed for want of jurisdiction over the person of this defendant.

(11) And for further plea to the jurisdiction in this behalf, filed to the said second count added by amendment as aforesaid, the Skandinavia Insurance Company, Limited, says and shows to this Honorable Court that the Court is without jurisdiction of the person of it, the said defendant, because the attempted service of process on it was and is abortive and void, for that it
122 appears from the said new count, that the plaintiff is not a resident of the State of Mississippi, but is a corporation organized and existing under the laws of and is a citizen and resident of the State of Louisiana; and that the defendant is not a citizen of the State of Mississippi, but is a corporation and citizen and resident of the Kingdom of Denmark. And defendant avers that the alleged indebtedness, if any exists, accrued without the State of Mississippi and grew out of a contract made without the State of Mississippi and to be performed wholly without the State of Mississippi.

And defendant avers that the defendant was not doing business in the State of Mississippi at the time that this suit was brought; that the defendant was not found in the State of Mississippi; that this defendant was not amendable to the service of summons attempted to be made on it in this case; and that this defendant has not waived its rights in the premises, by voluntary appearance or otherwise.

Wherefore defendant prays judgment of the said attempted service of summons, that it be quashed and set

aside and that the case be dismissed for want of jurisdiction over the person of this defendant.

PILLANS, COWLEY & GRESHAM,
LEATHERS & SYKES,
Attorneys for defendant appearing specially.

123 State of New York,
County of New York.

Before me, the undersigned officer authorized to administer oaths, this day personally appeared August Geberth, who being by me first duly sworn, doth on oath depose and say as follows:

I am Assistant United States Manager of The Skandinavia Insurance Co. and as such had to do with the subject matter of the foregoing styled law suit and the matters out of which it grows. As to the matters and facts averred in the foregoing pleas to the jurisdiction, which are not matters apparent on the record itself but are matters of fact outside of the record, I make oath that such allegations of fact are true.

AUGUST GEBERTH.

Subscribed and sworn to before me this 5th day of April, A. D. 1927.

CLINTON W. BEEBE,
Notary Public, Kings Co. No. 753 Reg. No. 9244. Certificate filed in New York County. New York Co. Clerk's No. 433 Register No. 9395. Commission expires March 30, 1929.

(Seal)

124 No. 52849 Series B.

State of New York,
County of New York, ss.

I, William T. Collins, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said County;

Do hereby certify that said Court is a Court of Record, having by law a seal; that Clinton W. Beebe whose name is subscribed to the annexed certificate of proof of acknowledgment of the annexed instrument was at the time of taking the same a Notary Public acting in and for said County, duly commissioned and sworn, and qualified to act as such; that he has filed in the clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of King with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further,

125 that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this the 6 day of April, 1927.

WILLIAM T. COLLINS,
Clerk.

Filed May 17, 1927.

126 DEMURRERS TO PLAINTIFF'S ANSWERS TO DEFENDANT'S MOTION TO QUASH EXCEPT ANSWER NUMBERED VII AND JOINDER OF ISSUE AND SAID ANSWER NUMBERED VII.

(Title Omitted.)

Comes the said defendant, continuing its special appearance for the sole purpose of insisting on its objections to the entertaining by this Honorable Court of jurisdiction to hear and determine the cause attempted to be promoted herein by the plaintiff; and demurs separately and severally to the answers filed herein by the plaintiff to the defendant's motion to quash and set aside the attempted service and to dismiss the cause for want of jurisdiction over the person to the said Skandinavia Insurance Company, Ltd., that is to say: the defendant demurs to the answer numbered "I" and for grounds of demurrer assigns the following:

(a) It neither traverses nor confesses and avoids the allegations of the motion to which it is pleaded.

(b) If it is to be treated as a pleading in confession and avoidance, then it confesses that the movant was not doing business in the state of Mississippi
127 at the time suit was brought, and avers no facts to avoid the conclusion therefrom, that this action is not maintainable.

(c) If the plea be treated as a traverse, then it is unduly prolix and confuses with the traverse many things not properly included in a plea of the general issue.

(d) Apparently the pleading is intended by the pleader to be a statement in detail of facts which the pleader conceives to constitute doing business in Mississippi, and therefore to constitute in law a traverse of the allegations of the motions as to matters resting in pais; which traverse would be and is properly made by joining issues on the motion.

(e) The matters set out in said answer and apparently intended by the pleader to be taken as allegations of facts which the pleader insists constitute doing business in Mississippi, affirmatively show that they constitute nothing more than procuring leave to do business and not the doing of business under and pursuant to that leave.

(f) The authority granted by the Skandianvia Insurance Company, Ltd., to the Insurance Commissioner of the State of Mississippi in law has reference to and applies only to, the service of progress on causes
128 of action arising within the State of Mississippi.

(g) The said answer does not state any reply which is valid in law to the said motion; for that the agreement therein mentioned touching the effect of the service of progress on the Insurance Commissioner of the State of Mississippi, was and is valid and effectual only as to process in litigations arising out of transactions had within the state of Mississippi.

And the defendant demurs to the answer numbered II and for grounds of demurrer assigns separately and severally as fully as if here set out, the grounds of assigned to the answer numbered I.

And defendant demurs to the answer numbered III and for grounds of demurrer assigns the same grounds as those assigned to the answer numbered I, as fully as if the said grounds were in detail set out here anew.

And defendant demurs to the answer numbered IV upon the same grounds separately and severally as assigned to the answer numbered I.

And defendant demurs to plaintiff's answer numbered V, on the same grounds already hereinbefore stated.

129 And defendant demurs to plaintiff's answer numbered VI upon the following grounds:

1. The matters set out in the said answer do not constitute either an unqualified appearance, a waiver of improper service or an estoppel to insist on a want of jurisdiction in the Court.

2. The said answer states no reply to the motion to which it is pleaded for that plaintiff was not obliged to dismiss as the action in New York but was simply put to its election which action to prosecute while the other lay dormant.

3. The filing by the defendant of the plea of lis pendens was neither an appearance, a waiver nor an estoppel.

4. The said answer neither traverses nor confesses and avoids the allegations of the motion to which it is pleaded.

5. If the answer is to be treated as a mere confession and avoidance, then it confesses the facts averred in the motion to which it is pleaded and avers no facts to avoid them.

And defendant demurs to plaintiff's numbered VIII and for grounds of demurrer assigns the same grounds of demurrer heretofore assigned to the answer numbered I.

130 And plaintiff joins issue on the answer numbered VII.

PILLANS, COWLEY & GRESHAM,
LEATHERS & SYKES,
Attorneys for the defendant.

Filed May 23, 1927.

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131 DEMURRERS TO REPLICATIONS TO PLEA TO JURISDICTION.

(Title Omitted.)

Comes the said defendant, and, continuing its special appearance confined to the purpose of respectfully asserting that the Honorable Court is without jurisdiction of the person of this defendant in this cause, demurs to the replications filed herein by the plaintiff to defendant's plea to the jurisdiction; that is to say:

Defendant demurs to the replication numbered I upon the following grounds:

(a) The said replication neither confesses the whole plea to which it is pleaded nor traverses the whole plea to which it is pleaded, but confesses part of the allegations of the plea and traverses other parts.

(b) The said replication is neither a traverse nor a confession and avoidance of the plea to which it is pleaded.

(c) The replication is a departure from the declaration.

132 And defendant demurs to the replication numbered II upon the following grounds:

(a) It is neither traverse nor confesses and avoids the plea.

(b) If it be treated as a plea in confession and avoidance, then it confesses that the defendant was not doing business in the State of Mississippi at the time suit was brought and avers no facts to avoid the conclusion therefrom that this action is not maintainable.

(c) If the replication be treated as a traverse, then it is unduly prolix and confuses with the traverse many things not properly included in a general traverse.

(d) Apparently the replication is intended by the plaintiff to be a statement in detail of matters which the pleader conceives to constitutes a doing of business in Mississippi by the defendant, and, therefore, to constitute in a law a traverse of the allegations of the plea as to matters resting in pais, which traverses would be and is properly made by joining issues on the motion

(e) The matters set out in the said replication and apparently intended by the pleader to be taken as allegations which the pleader insists show a doing
133 of business in Mississippi, as a matter of law affirmatively show that there was nothing more than a procuring of leave to do business, and not a doing business under and pursuant to that leave.

(f) The authority granted by the defendant to the Insurance Commission of the state of Mississippi is applicable only to the service of process on causes of action arising within the state of Mississippi.

(g) The replication does not state any answer in law to the said plea; for that the agreement, in the replication mentioned, touching the effect of the service of process on the Insurance Commissioner of the State of Mississippi, was valid and effectual only as to process issued in litigations arising out of transactions had within the state of Mississippi.

And defendant demurs to replication numbered III and for grounds of demurrer assigns separately and severally as fully as if here set out anew, those grounds of demurrer to replication numbered II that are styled "e," "f," and "g."

And defendant demurs to replication numbered IV, upon the following ground:

134 1. The matters set out in said replication do not constitute either an unqualified appearance a waiver of insufficient service or an estoppel to insist on a want of jurisdiction of the person.

2. It affirmatively appears from the record that the motion to strike mentioned in said replication had naught to do with the merits of the case, if there he had jurisdiction of the person of the defendant, but had solely to do with the contest over the question of jurisdiction vel non.

And defendant demurs to plaintiff's replication numbered VI and for ground of said demurrer says that it affirmatively appears from the motion to strike, mentioned in said replication, and the "diverse arguments in writing in support of the said motion," that the defendant's appearance was made in terms specially for the purpose of making the motion and for no other purpose, and that this is clearly and repeatedly pointed out in the said arguments.

And defendant demurs to plaintiff's replication numbered VII upon the following grounds:

1. It appears from the pleadings in the case that the contract sued on was not made in Mississippi and that none of the matters and things concerned
135 therewith constituted a contracting or doing of business in Mississippi.

2. The statute of the state of Mississippi in said replication mentioned is applicable to curable defects in the service of process and not to an inherent lack of jurisdiction.

3. If the said statute of Mississippi should be construed as apparently insisted by the plaintiff, it would be void, to the extent that such construction would carry it, for that it would deprive a non resident defendant

sued within the State of Mississippi of his right to insist that there was no jurisdiction of the person; and hence would deprive him of the equal protection of the laws, and would deprive him of his property without due process of law.

And defendant demurs to plaintiff's replication numbered VIII upon the following grounds:

1. The matters set out in said replication do not constitute either an unqualified appearance, a waiver of want of proper service, or an estoppel to insist on the want of jurisdiction of the person.

And defendant's demurs to plaintiff's replication IX upon the ground just assigned to replication VIII and on the following ground:

136 2. The said replication confesses the averments of the plea and does not set out any matter that avoids them; for that plaintiff was not obliged to dismiss its action in New York but was simply put to its election which action prosecute while the other lay dormant.

And defendant demurs to plaintiff's replication numbered X and for grounds of demurrer assigns separately and severally the same grounds heretofore assigned to replication number II.

PILLANS, COWLEY & GRESHAM,
LEATHERS & SYKES,
Attorneys for the defendant.

Filed May 23, 1927.

137 ADDITIONAL GROUNDS OF DEMURRER BY DEFENDANT TO CERTAIN ANSWERS TO PLAINTIFF TO DEFENDANTS MOTION TO QUASH.

(Title Omitted.)

Comes the Skandinavia Insurance Company, and continuing its special appearance for the purpose of questioning the jurisdiction of the person of the said defendant, assigns the following additional grounds of demurrer to certain of the answer filed by the plaintiff herein to the defendant's motion to quash, that is to say the defendant assigns the following additional grounds of demurrer to plaintiff's said answer numbered "I."

(h) The said answer does not state any reply which is valid in law; for that the said relied on to make the Skandinavia Insurance Company subject to suit in Mississippi to the same extent as domestic corporations of the State of Mississippi and whether the cause of action accrued within the state of Mississippi or not are opposed to the laws of the United States and are of no avail in an action pending in the Courts of the United States.

And the defendant assigns the following additional ground of demurrer to plaintiff's answer numbered "II":

138 (i) The said answer makes no reply to the said motion to quash for that the statute of the state of Mississippi relied on in the said answer, by which it is declared that a motion to quash shall be

deemed a general appearance to the next term, is applicable only to actions pending in the Courts of the State of Mississippi and has no binding force and effect in actions pending in the Courts of the United States.

(j) The said answer does not state any reply valid in law to the said motion to quash; for that the statute of the state of Mississippi relied on in said answer, declaring that a motion to quash shall be deemed a general appearance to the next term, is opposed to the laws of the United States, and is of no force or effect in the Courts of the United States in actions pending in the said Courts.

PELLANS, COWLEY & GRESHAM,
LEATHERS & SYKES,
Attorneys for the Skandinavia Insurance Company, Ltd., appearing specially and only for the purposes hereinbefore indicated.

Filed June 13, 1927.

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139 ADDITIONAL GROUNDS OF DEMURRER BY DEFENDANT.

(Title Omitted.)

Comes the Skandinavia Insurance Company, Ltd., continuing its special appearance solely for the purpose of questioning the jurisdiction of its person in this proceeding, and for no other purpose, and, so specially ap-

pearing, assigns the following grounds of demurrer in addition to those heretofore assigned to certain replications filed by the plaintiff to the defendant's plea to the jurisdiction; that is to say:

The defendant assigns the following additional grounds to the replication numbered "II":

(h) The replication does not state any answer in law to the said plea for that the statutory law of the State of Mississippi in the said plea mentioned, is of force and effect only as to actions pending in the Courts of the State of Mississippi and has no application to or effect upon causes pending in the Courts of the United States.

140 (i) The said replication does not state any answer in law to the said plea; for that the statutory law of the State of Mississippi, in the said replication mentioned, is as applied to cases pending in the Courts of the United States, in opposition to the laws of the United States touching the jurisdiction of the Courts of the United States, and hence has no force or effect in cases pending in the Courts of the United States.

And defendant assigns the following additional grounds of demurrer to plaintiff's replication numbered "VII" that is to say:

(k) The said replication constitutes in law no reply to the defendant's plea to the jurisdiction, for that the statute of the State of Mississippi therein mentioned, declaring that a motion to quash should constitute a

general appearance to the next term, is of force and effect only as to actions pending in the Courts of the State of Mississippi.

(5) The statute of the State of Mississippi in the said replications mentioned, declaring that a motion to quash should constitute a general appearance to the next term, is opposed to the laws of the United States touching the jurisdiction of the of the person
141 of the defendant in cases pending in the Courts of the United States, and the said statute of the State of Mississippi is of no force and effect in cases pending in the Courts of the United States.

And the defendant assigns the following additional grounds of demurrer to replication numbered "X" that is to say: the defendant assigns the same additional grounds of demurrer to the said replication numbered "X" as the additional grounds of demurrer hereinbefore assigned to replication numbered "II."

PELLAN, COWLEY & GRESHAM,
LEATHERS & SYKES,
Attorneys for Skandinavia Insurance Co., Ltd., appearing specially and solely for the purposes hereinbefore indicated.

Filed June 13, 1927.

142 ORDER ON DEMURRERS OF DEFENDANT

(Title Omitted.)

This cause came on to be heard on this the 8th day of September, 1927, on demurrers filed by the defendant to answers by the plaintiff to defendant's motion to quash the service of process and discharge the defendant; and also on defendant's demurrers to plaintiff's replications to defendant's plea to the jurisdiction and the Court ordered that the answer to the motion to quash and the replications to the plea to the jurisdiction be treated as one, and that the demurrers to the replication to the plea to the jurisdiction be argued and regarded as determinative, and to this the parties consented. And the Court having heard counsel, and having considered the said pleadings, is of opinion that the demurrers to the first replication should be overruled, and that the demurrers to the first replication should be overruled, and that the demurrers to each of the other replications should be sustained.

Where on, it is ordered and adjudged that the defendant's demurrers to the plaintiff's replication Number I are hereby overruled.

143 That defendant's demurrers to replication Number II are hereby sustained.

That the defendant's demurrers to replication Number III are hereby sustained.

That the defendant's demurrers to replication Number IV are hereby sustained.

That the defendant's demurrers to replication Number V are hereby sustained.

That the defendant's demurrers to replication Number VI are hereby sustained.

That the defendant's demurrers to replication Number VII are hereby sustained.

That the defendant's demurrers to replication Number VIII are hereby sustained.

That the defendant's demurrers to replication Number IX are hereby sustained.

That the defendant's demurrers to replication Number X are hereby sustained.

To which action of the Court the plaintiff excepted in open Court, and its exceptions were allowed.

E. R. HOLMES, Judge.

M. R. 6 p. 337.

Filed September 9, 1927.

144 On the question of issue being joined by the plaintiff's Replication Numbered One to the Defendant's plea of jurisdiction, and on the issue joined by the defendant on the answer numbered VII of the plaintiff to the defendant's motion to quash the process, the following proceedings were had:

By Mr. Pillans for the Defendant:

The defendant offers in evidence the deposition of August Geberth, taken in New York City pursuant to

notice given attorneys for plaintiff by attorneys for defendant on May 17, 1926, and deposition being given on May 25, 1926, under the following stipulation:

"Appearances:

Messers. Pillans, Cowley & Gresham, Messers. Bigham, Englar and Jones, (Mr. Detels), for the defendant.

Messers. Mize & Mize, Messers. Barry, Wainwright, Thatcher and Symmers, (Mr. Townsend and Mr. McGarvey) for the plaintiff.

It is stipulated that the testimony may be taken by a stenographer—signing, filing and certification being waived, stenographer's fees to be taxable, all objections except as to the form of the questions to be reserved for the trial."

Said deposition was filed in this cause of February 25, 1927, as shown by filing stamp. By R. L. Todd, Clerk, Geo. P. Money, Deputy, and is as fol-
145 lows, summarized and the objections and exceptions hereinafter stated were taken on the trial of the cause:

AUGUST GERERTH, being first duly sworn, testified:

On direct examination, witness stated that he resides in Yonkers, New York, and his place of business is 18 Maiden Lane, New York City.

That he is connected with the Skandinavia Insurance Company, Limited, of Copenhagen, Denmark, and occupies the position of Assistant United States Manager of

said Company; that he was appointed to that office on August 5, 1924, and has held that position ever since; that his chief duty in that capacity is the supervising the writing of insurance in the United States of the Company.

That the Skandinavia Insurance Company, Limited, has one office in the United States, which office is situated in New York City, and all of the writing of insurance by the company anywhere in the United States comes through that office.

That the Skandinavia Insurance Company, Limited, has had no transactions through Messers. R. C. Wilkerson, Inc., or any one else within the State of Mississippi during the time witness has been assistant United States Manager for the Company.

146 "Q. State whether or not the Skandinavia Insurance Company, Limited, has done any business in the state of Mississippi through either Messers. R. C. Wilkerson, Inc., or anyone else located in Mississippi?

By Mr. Garner W. Green on trial of cause:
Objected to as stating a legal conclusion.

Overruled by the Court—exception taken.

A. They have not transacted any business.

That the Skandinavia Insurance Company, Ltd., was not doing business in the State of Mississippi on April 17, 1925; that the Skandinavia Insurance Company had not done any business within the state of Mississippi prior to April 17, 1925; and has not done any business within the state of Mississippi since April 17, 1925.

That the nature of the business of the Skandinavia Insurance Company, Limited, in the United States of America, throughout the period from the time witness was appointed Assistant United States Manager of said company up to and including the present, is a business of reinsurance—fire reinsurance business; that the Company has not been writing any direct insurance during that period.

That the business of reinsurance is transacted as follows: The reinsurance company takes over surplus lines or participation lines from the direct writing company.

147

Asked, "What does the direct writing company insure?" stated: The direct writing company does business with the insured and issues policies on risks located within the United States.

Plaintiff objects on the ground that that is all in writing.

Overruled—exception.

Witness answers that the direct writing company writes policies on property physically located within the United States fire insurance on houses and contents.

Asked—

"Then what does the Skandinavia Insurance Company, Ltd., reinsure? Witness replied.

"They reinsure direct writing company."

Plaintiff objects to answer as stating conclusion; overruled and plaintiff excepted.

Witness was asked where the contracts of reinsurances were executed, to which plaintiff objected and objection overruled.

That the contracts of reinsurance were executed in the New York office of the Skandinavia Insurance Co., Ltd., or in the office of the ceding company, or both offices. By the ceding company he means the
148 direct writing company.

Plaintiff objects as not material and as being in writing.

Objection sustained.

By the defendant:

"If your Honor please, this testimony was taken on notice in New York on May 25, 1926, and an objection of that character, which is readily curable at once when it was being made, should have been made at the time the testimony was taken and not now."

By the Court:

On the ground that the objection comes too late, the Court will overrule the objection. Plaintiff excepts.

Asked—

"What does the Skandinavia Insurance Company, Ltd., agree to do in such reinsurance contracts or treaties?

A. They agree to reimburse the direct writing company for losses incurred by them on risks reinsured with the Skandinavia Insurance Co., Ltd.

By Counsel for Plaintiff:

That situation is not limited to doing business in the State of Mississippi, and we want to object to that as being contrary to law.

149 Objection sustained because documents speak for themselves.

That properties insured by the direct writing company are located anywhere in the United States; direct writing fire insurance companies which have treaties with the Skandinavia Insurance Company, Ltd., may have issued policies on property physically located in the state of Mississippi.

Under the terms of the reinsurance treaties entered into by the Skandinavia Insurance Company, Ltd., with direct writing companies, the Skandinavia Insurance Co., Ltd., does not select the risk with respect to the physical location of the property; all reinsurance is done under contract, where the reinsurance company has no choice in the matter.

That the Skandinavia Insurance Company, Ltd., has not ever had any transactions of reinsurance with any insurance company which has or had its home office within the state of Mississippi; that the Skandinavia Insurance Company, Ltd., has never had any transaction of reinsurance under or pursuant to the laws of the state of Mississippi.

"Q You stated that some of the direct writing companies which had reinsurance treaties with the Skandin

avia Insurance Company, Ltd., may have issued
150 policies on properties physically located within the State of Mississippi—were any reinsurance transactions with respect to such risks had within the state of Mississippi?

A. No, they are made outside of the state of Mississippi."

That all the Skandinavia Insurance Company, Ltd., did in the state of Mississippi has been the filing of the annual statement with the Insurance Department of the state of Mississippi, reporting such business as was transacted in general by the Skandinavia Insurance Company, Ltd., which means, the general annual statement reporting the risks and reinsured and located within the state of Mississippi; that is the risks written by the direct writing company outside of Mississippi.

That as to the connection between the Skandinavia Insurance Company, Ltd., with Robert C. Wilkerson, Inc., of Vicksburg, Mississippi, he is what is known as a nominal agent, and has no authority to write any business whatsoever. That during the time witness has been connected with said Skandinavia Insurance Co., Ltd., it has had no agent in Mississippi other than Messrs. Robert C. Wilkerson, Inc.

On cross examination witness testified:

(By Mr. Robert Townsend in New York):

That when he speaks of doing business in any state, he means only the signing of the under-writ-
151 ing contracts. That those contracts are signed in New York by the ceding companies; that the two parties to the contract sign. That it is the sign

ing of those contracts that he has in mind when he speaks of doing business. That he does not use the term in any other sense.

That the Skandinavia Insurance Company, Ltd., has the authorization to do business in the state of Mississippi as a reinsuring company; that they are authorized to do business under the law of Mississippi in Mississippi as a reinsuring company. That, however the business is done, they have that authority to do business in Mississippi.

That he thinks it was in 1917 the Skandinavia Insurance Company first obtained that authority, is not sure of the year.

"Q. Then they had such authority at all times material to this action here—that is, from 1917 up to what time?

A. We are still admitted in Mississippi.

Q. You are still admitted in Mississippi?

A. Yes.

Q. And you have been admitted ever since around 1917?

A. Yes; I am not sure of the time.

Q. Certainly, since August 5, 1924, when you became assistant manager?

A. Yes."

152 and continually since that time?

That the Company has filed with the Insurance Commissioner of Mississippi the necessary documents for that authorization, and has complied with the law of Mississippi in all respects, as far as necessary to do business as a reinsurance company.

That, prior to his becoming assistant United States Manager of the Company in August, 1924, he was in the

office of Sumner Ballard, United States Manager of the Skandinavia Insurance Company, Ltd., as chief accountant. That as chief accountant, he did not have anything to do with applications for underwriting authorization in the various states, but these matters have come under his direction only since August 5, 1924.

Asked if it is his best recollection that the company was first licensed to do business in Mississippi around 1917, he replied that that was the time when said Company entered the United States to do business and it had to be licensed in all those states, and Mississippi of course. That Mississippi was simply one of the various states in which they were licensed to do business.

On redirect examination witness stated that the Skandinavia Insurance Company, Ltd., was not admitted to write direct insurance in the state
133 of Mississippi; that the Skandinavia Insurance Company, Limited, never had any transaction or did business of any sort in the state of Mississippi other than file the annual report with the Commissioner and pay taxes and apply for license for nominal agent.

The defendant then ordered in evidence the deposition of Theo Hardy taken by defendant in Vicksburg, Mississippi, on May 27, 1926, pursuant to notice given by attorneys for defendant to attorneys for plaintiff on May 24, 1926. Mr. Palmer Pillans of Pillans, Cowley & Gresham, appearing for the defendant, and Mr. Wm. I. McKay appearing for the plaintiff on taking of said deposition, which was as follows, to wit:

THEO HARDY, being first duly sworn, testified as follows:

On re-direct examination, the witness stated:

That he is of R. C. Wilkerson, Incorporated, and is engaged in the general practice of insurance at Vicksburg, Mississippi, and has been for sixteen and one-half years, and has been with R. Wilkerson, Inc., throughout that period, and engaged in the practice of insurance throughout said period.

That he knows the Skandinavia Insurance Company just by it having used their name as agent; knows there is such company.

154 Asked:

"Q. Some years ago there was quite a bit of debate between the state of Mississippi and foreign insurance companies (I mention that in order to fix a period of time), at that time, I believe a number of companies ceased doing business here and afterwards came back into the state—that is correct, isn't it?

Q. Prior to that time of which I speak had there been any communication had between your office, R. C. Wilkerson, Inc., and the Skandinavia Insurance Company touching representation by you of any character in Mississippi? When I say you, I mean not you individually, but your organization?" to which witness replied that the only business they had had with them was that they received a letter from Metzenbecher & Ballard requesting that they be allowed to designate witness' company as agents for a number of Companies in the state, which, as witness understood, they had to

have in the state when they entered the state to do re-insurance business. That witness' firm told them that was all right, and the Skandinavia was amongst those Companies. Outside of that, witness does not know, they sent them a check for $5,000 for each of the companies, and that is all the correspondence and
155 dealings they had with the Skandinavia Insurance Co.

That, subsequent to that time, there was a withdrawal when all the big companies left the state, and the Skandinavia Ins. Company left the state then and they did not hear anything more from it until the Companies came back in 1923. Then witness company heard from them again during that year, requesting the use of the name of witness' company the same as it had done before, and they told them all right. That exactly the same relationship as before was resumed.

"Q. Now, with reference to the Skandinavia Insurance Company, I understood you to say that the sole communication or connection that you had with them had to do with re-insurance?

A. That was our understanding, yes, sir.

Q. There was no direct insurance writing—or direct risks?

A. Not that I know of."

That, during the entire period of time that that relationship had existed between R. C. Wilkerson, Inc., and the Skandinavia Insurance Company, R. C. Wilkerson, Inc., has never at any time written any business in Mississippi for the Skandinavia Insurance Company. That no agent or representative of R. C. Wilkerson, Inc., has

ever written any contract of insurance of any
156 character either directly or indirectly—either
direct insurance or re-insurance, in Mississippi,
for the Skandinavia Insurance Company.

That re-insurance is insurance which Insurance Companies take out of their liability on certain risks, they insure their excess lines. For instance, when a company writes a policy for $10,000 on a building and the company only carries $2500 of it net, they insure their interest in the other part of it as re-insurance.

"Q. The re-insuring company, then, doesn't insure the original assured but insures the original insurer?

Counsel for Plaintiff:

We object to that. It is not a question of what re-insurance is. It could be in that form or any other form.

The Court:

I will let it go in for what it is worth.

A. That is correct, yes, sir."

That at no time through the period witness' company has represented the Skandinavia Insurance Company has it written even that character of insurance through witness' office, in Mississippi. As far a witness' personal knowledge goes, the Skandinavia Insurance Company has not made any contracts, either direct or re-
insurance, through any office other than wit-
157 ness's office, in Mississippi. That, throughout the period of time witness has been testifying about, they have not been authorized by the Skandinavia Insurance Company to write any insurance, either direct or re-insurance, in Mississippi.

Witness states that he cannot produce the original letter from Metzenbecher & Ballard that he testified about as they burn letters up after thy get about two years old; he recalls its contents fairly accurately. He is thoroughly familiar with the connection between his company and the Skandinavia as testified to be him; that he is the gentlemen of his organization who had personal knowledge of this particular matter.

Objection by Mr. McKay for the plaintiff, on the taking of the deposition, that witness ought to produce either the original or a copy of the communication that he is testifying about as the best evidence.

By Mr. Pillans for the Defendant:

The testimony of the witness shows the original was burned; therefore; the secondary evidence is admissible.

That the condition between witness's organization and the Skandinavia Insurance Company testified to by him existed for some time prior to 1921, and then, from 1921, when the companies all left the state, it ceased to exist until 1923.

158 The companies came back in March, 1923, and some time after that the condition then existed again. That said condition existed in April, 1925, and prior to that time, back to the time that the companies returned into the state, and subsequently to that time, continuously.

So far as witness's knowledge goes, there has been throughout that period no other agent in the state of Mississippi for the Skandinavia Insurance Company than witness' company.

Cross Examination.

By Mr. McKay:

Prior to the time the foreign insurance companies withdrew from the State of Mississippi, witness' company permitted the use of their name as agent for the Skandinavia Insurance Company, which use, as they understood, the Skandinavia Insurance had to have to re-insure in this state, but witness' company had no direct representation with them at all.

"Q. You were their agents for whatever business they wanted to do here, were you not?

A. I presume so, they used our name as agent.

Q. Published your name as their agents—is that necessary?

A. With the Insurance Commissioner, I understand, but I could not tell you that."

159 That they wrote witness' company and requested that they be allowed to use the name of witness' company as their agents. Witness understood at the time that the only business the Skandinavia Insurance Company would be re-insurance business; that they got this from the letter witness firm received from them originally that they wanted to use the name of said company for that purpose. The original letter has long ago been destroyed; witness does not know whether the Skandinavia Insurance Company keeps a record of its letters; does not know if a carbon copy of that letter from said company to witness' company could be obtained.

Asked—

"The fact that they requested you to act as their agent was of course a representation to you that they had been authorized and clothed to do business in the state of Mississippi, was it not?

Objection by Mr. Pillans as asking witness to draw a conclusion.

Witness replied that he did not know the requirement of the Insurance Department of the state as to the Companies doing re-insurance business. That his company has never knowingly or willingly represented a company not authorized to do business in the state of Mississippi.

Asked if the fact that the Skandinavia Insurance Company requested witness company to act as there
160 [their] agent was construed by witness to be a representation that the Skandinavia was authorized and clothed to do business in Mississippi, witness said "No."

"Q. Would you have permitted the use of your name as agent if you had known or thought that they were not authorized to do business in the State of Mississippi?

A. I do not know what you mean—whether you mean to do direct writing or re-insurance.

Q. The kind of business you were asked to do as their agent.

A. I was not asked to do any business, only asked to permit the use of their name."

That this meant, he presumes, that if they were going to write any re-insurance in Mississippi, they would have to have an agent in order to get license to do so. Witness is not positive about that as he is not familiar with the law of writing re-insurance; that witness does not do that class of business.

That witness does not know of his own knowledge whether the Skandinavia Insurance Company did any direct insurance in the state of Mississippi or not; only knows that they did not do any through witness's office; does not known personal knowledge whether re-insurance is the only business that the Skandinavia In-
161 surance Company, Ltd., did; has no information whatever as to when and what kinds, of insurance business the Skandinavia Insurance Company, Ltd., did in Mississippi except through witness' office; all he knows is that the Managers of the Skandinavia Insurance Company, Limited, requested and paid his agency for the use of its name as agents of said Skandinavia Insurance Company. That his relationship existed prior and up to the time the Insurance Companies withdrew from the state of Mississippi in 1921 and was resumed when they came back into the state in 1923, would not swear whether it still exists with reference to the Skandinavia Insurance Company at the present time; as far as he knows the relationship between his company and the Skandinavia Insurance Company as heretofore testified to by him still exists; and so far as he knows and believes the said relationship between his agency and the Skandinavia Insurance Company, Limited, existed throughout April, 1923.

Re-Direct Examination.

In addition to the facts stated on cross examination to the effect that all witness knows is that sometime

prior to 1921 he was requested by the Skandianavia Insurance Company, Limited, to permit the use of the name of witness' agency for re-insurance purposes in the State of Mississippi, and that except during the period when the companies withdrew from the state
162 that condition remained down to the present time and that the condition existed throughout the month of April, 1925, witness states that he also knows that throughout that period Messers. R. C. Wilkerson, Inc., did not write any contract of insurance either direct or reinsurance for the Skandinavia Insurance Company, Limited, within the state of Mississippi.

This was all of said deposition, and the same was certified to by Bertha Anderson, notary public before whom said deposition was taken pursuant to notice annexed, and said certificate was signed and sealed on May 31, 1926, and filed on June 2, 1926, in this cause.

By Counsel for Defendant, Mr. Pillans:

The defendant offers in evidence a stipulation between the parties which has been dictated, but not transcribed, which has to do with the new count added in the amendment. That stipulation agrees that the cause of action in the second count is the same as the cause of action declared on in the first count; the policy of insurance was a policy on cargo written in Buenos Aires, to Cuba, and that the loss out of which the claim grows occurred in Montevideo by fire. That's the defendant's case.

163 Said stipulation is as follows:

STIPULATION.

It is stipulated and agreed by and between S. C. Mize and Green, Green & Potter, for the Plaintiff, and Leathers & Sykes and Pillans, Cowling & Gresham, for the defendant, the counsel for the defendant appearing specially for the purpose of this stipulation, and for no other purpose, as follows:

The cause of action sued on in the second count of Plaintiff's complaint, added by way of amendment, March 29th, 1927, is the same cause of action as that declared on in the first count, to-wit: the demand for money due as for loss of goods insured under a policy of marine insurance issued by defendant to plaintiff in Buenos Aires, in the Argentine Republic, upon cargo to be carried Port of Montevideo, Urguary to the Port of Havana, in Cuba, and that the loss which it is claimed caused a liability under the said policy of insurance occurred in Montevideo.

It is hereby further stipulated that the replications which plaintiff has filed to the defendant's pleas to the jurisdiction to the first count shall be considered as having been filed to the pleas to the jurisdiction of the second; and that defendant's demurrers thereto shall be the same as were filed to the first count.

164 By Mr. Chalmers Potter:

Now comes the Plaintiff and moves the Court to exclude the evidence heretofore offered on behalf of the defendant on the pleas to the jurisdiction, and for cause of said motion assigns the following: That, on March 29, 1927, there was filed an amendment or addi

tional count to plaintiff's declaration, upon which process was issued and served by the United States Marshal upon R. C. Wilkerson, agent of the Skandinavia Insurance Company, said service having been had some time subsequent to March 29, 1927; that the burden of proof in the matter now before the Court is upon the defendant, and the defendant has offered no evidence whatever as to any dealings of the defendant, Skandinavia Insurance Company, had within the state of Mississippi subsequent to the 31st day of May, 1926. The deposition of Mr. Theo Hardy being taken in the city of Vicksburg, Mississippi, the 31st day of May, 1926, and deposition of Mr. August Geberth being taken in the City of New York on the 25th day of May, 1926, and as the defendant has wholly failed to offer any evidence whatsoever to show that the Company was not doing business within the state of Mississippi at the time of the service upon R. C. Wilkerson, agent, during the year 1927, the defendant has, therefore, failed to meet the burden, and the plaintiff moves the Court
165 to exclude the evidence and direct a verdict of the jury for the plaintiff in the case.

By Mr. Pillans, for the Defendant:

Let the motion be well taken and the submission set aside and an opportunity to take the testimony touching the proposition just made by defendant.

By the Court:

Yes, I think myself, if that motion is insisted upon, the matter should be taken from the jury and the defendant be given an opportunity to take further testimony. I thought there was an understanding that this proof was to be used.

By Mr. Pillans:

No, sir, we didn't have any stipulation of that sort. The motion is certainly technically good, and I therefore ask that the submission be set aside on the plea, and leave be given to take the testimony as to the matter intervening between the time.

By the Court:

Let the motion be sustained.

By Mr. Mize:

I think we prefer not to insist upon the motion and go on with the case, because, as I understand it, there is no further proof we can offer on this same
166 proposition than we could have offered at that time.

By Mr. Chalmers Potter:

We withdraw the motion.

By the Court:

Just a mere withdrawal of the motion would not relieve them of the point in the motion, unless there is some agreement upon it. If the proof shows they were not doing business in the state, the withdrawal of the motion would not do any good.

By Mr. Garner W. Green:

We are willing to agree that the witness will swear the same thing now.

By the Court:

I think you had better dictate the stipulation to the stenographer, so as to get the point in the record.

By Mr. Gardner W. Green:

It is admitted by plaintiff that it may be considered that defendant has introduced the same two witnesses

named, and that they have sworn before the jury the same condition set forth in their testimony exists up to the present time.

Thereupon the plaintiff, to sustain the issues on its part, offered evidence as follows:

By Mr. Chalmers Potter:

We now introduce a stipulation had at the last term of the Court, which stipulation is in words and figures as follows:

167 (Title Omitted.)

It is hereby agreed by and between the parties hereto, without any waiver of the entry of special appearance by the defendant, that of W. D. Manar were present and testifying, he would testify in substance that he is the circulation manager of the Clarion Ledger, a daily newspaper published in the city of Jackson, Mississippi, and that the November 11, 1925, issue of said paper contained the following abstract of the condition of said company printed in said paper:

Statement. (Fire)

Skandinavia Insurance Company,
of Copenhagen, Denmark.

Condition December 31st, 1924, as per statement filed:

Capital Stock. Amount of Capital Deposited with N. York Ins. Dept.	$400,000.00
Ledger assets (per balance) Dec. 31st of previous year	3,539,362.17

Income.

Net premium income	$1,735,315.99	
Total investment income	182,696.70	
Miscellaneous income	19,584.05	
Total Income		1,927,596.74

168 Disbursements.

Net amount paid policy holders for losses	$1,354,629.10
Other disbursements	826,823.86
Total disbursements	2,181,452.96

Assets.

Total admitted assets	3,274,882.95

Liabilities.

Total amount of liabilities, except capital	2,175,041.46
Capital, $400,000; surplus, $699,841.49	1,099,841.49
Total liabilities	2,385,658.05

W. MacIntosh, U. S. Manager and Attorney. General agent for service. Insurance Commissioner of Mississippi.

State of Mississippi,
Insurance Department.

I, T. M. Henery, Insurance Commissioner, do hereby certify that the above is a true and correct abstract of the statement of the above company filed with this Department showing the condition of said company on the 31st day of December, 1924.

T. M. HENERY,
Insurance Commissioner.

That the cash books of said Company show that payments were made for publishing similar statements for the years 1923 and 1924.

169 That if E. Ellis, were present and testifying, he would testify that he is the clerk of the insurance Department of the state of Mississippi, and that the Skandinavia Insurance Company, the defendant herein, for the years 1923, 1924, and 1925, sent to the Insurance Department of the State of Mississippi for each of said years the sum of $9.00 for the publication of abstract similar to the abstract set out in the stipulation with regard to witness, Manager, as published in said Daily Clarion Ledger, for November 11, 1925, and that the Insurance Department paid said sum of $9.00 for each of said years to the said Daily Clarion Ledger for publishing the statements above mentioned, which were sent to it by the Skandinavia Insurance Company.

That said abstracts showing the condition of said company for the years in question were mailed by the Skandinavia Insurance Company to the Insurance Department of the state of Mississippi for the years in question.

It is understood that this stipulation does not cut off the right of defendant to object to said evidence on the ground that the same is incompetent, irrelevant and immaterial.

This February 26, A. D. 1927.

PILLANS, COWLING & GRESHAM,
LEATHERS & SYKES,
For Defendant.
GREEN, GREE & POTTER,
JOHN M. LEE,
S. C. MIZE,
Attorneys for Plaintiff.

Dated, 2/26/27.

Filed Sept. 23/1927.

By Mr. Garner W. Green:

In order to bring this down, I will ask to make this current too, because it was entered into at the last term of Court.

By Mr. Pillans:

Yes, sir.

By Mr. Garner Green:

That the same conditions that have been detailed in this certificate of W. D. Manar, and E. Ellis, have continued up to the present time and they would so testify if present.

Plaintiff then offered in evidence letter dated March 16, 1923, to T. M. Henery, signed by O.

Ehmann, Assistant U. S. Manager of Skandinavia Insurance Co., Ltd., being in words and figures as follows, to-wit:

EXHIBIT "D."

Copy (A)

Skandinavia Insurance Company.
Copenhagen, Denmark.

No. 80 Maiden Lane, New York, March 16, 1923.

Hon. T. M. Henery,
Insurance Commissioner,
Jackson, Mississippi.

Dear Sir:

This company being desirous of re-entering the State of Mississippi for the purpose of transacting a fire reinsurance business under treatises with direct writing companies authorized to transact business in your state, we shall consider it a favor if you will be kind enough to advise us whether it will be sufficient for this purpose for us to file with you an annual statement for the year ending December 31, 1922, together with the necessary fees in connection therewith.

Thanking you in anticipation for your advices, we beg to remain,

Yours very respectfully,

(Signed) O. EHMANN,
Ass't. U. S. Manager.

172 The Plaintiff then offered in evidence the certificate of the Skandinavia Insurance Com-

pany, Ltd., signed, sealed and acknowledged by it thru its Assistant U. S. Manager, O. Ehmann, appointing T. M. Henery, Insurance Commissioner, as its agent for process, and certificate of the Skandinavia Insurance Company, Ltd., certifying that R. C. Wilkerson, Vicksburg, Mississippi, was its authorized agent as shown therein, said certificates being marked "Received and filed, March 31, 1923," by the Insurance Department of Mississippi, T. M. Henery, Commissioner, and which said certificates are in words and figures as follows, to-wit:

173 EXHIBIT "A-1."

Certificate of Appointment of Insurance Commissioner as Agent for Process. (B)

Copy.

D.

State of Mississippi,
Insurance Department.

Know all men by these presents:

That the Skandinavia Insurance Company, of the city of Copenhagen and Kingdom of Denmark, desiring to transact business in the State of Mississippi, in conformity with the laws thereof, does hereby make, constitute and appoint T. M. Henery, Insurance Commissioner of the State of Mississippi, and his successor in office, its true and lawful Attorney in and for said State of Mississippi, upon whom all processes of law against said corporation in any action or legal proceeding may be served, subject to and in accordance with all the

provisions of the statutes and laws of said State of Mississippi now in force, and such other acts as may be hereafter amendatory thereof and supplementary thereto; and said Company does hereby expressly agree that any and all lawful processes against it which may be served upon said T. M. Henery, Insurance Commissioner, and his successor, shall be deemed valid personal service upon said company and shall be of the same force and validity as if served upon said company; and this authority shall continue in force and irrevocable so long as any liability of the said company remains outstanding in the said State of Mississippi, whether incurred before or since the making and execution of this instrument.

In witness whereof, the said company, to these presents affixed its corporate seal and caused the same to be subscribed and attested by its Ass't. U. S. Manager at the City of New York in the State of New York, on the 27th day of March, A. D. 1923.

SKANDINAVIA INSURANCE COMPANY,
(Signed) O. EHMARD,
Ass't. U. S. Manager.

State of New York,
County of New York, ss.

On this 27th day of March, A. D. 1923, before me, the subscriber, a Notary Public, duly appointed to take the proof and acknowledgment of deeds and other instruments came O. Ehmann, Ass't. U. S. Manager of the Skandinavia Insurance Company, to me personally known to be the individuals described in and who executed the preceding instrument; and he duly acknowledged the execution of the same; and being by me sworn,

deposeth and saith, that he is the said officers of the Insurance Company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said Company; and that said corporate seal and his signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at the City of New York the day and date first above written.

(Signed) LOUIS A. TRUSLOW,
(Seal) Notary Public for
Kings County.

176 EXHIBIT A 2.

Certificate as to Authorization of R. C. Wilkerson as Agent.

State of New York,
City of New York, 1923.

To the Insurance Commissioner of the State of Mississippi:

This is to certify, that the persons named below are the authorized agents for the transaction of the business of fire and tornado re-insurance, at the places named, in the State of Mississippi, during the year 19.., for the Skandinavia Insurance Company of Copenhagen in the Kingdom of Denmark, and you are hereby authorized to issue your Certificate of authority to them for that period. All said agents are bona fide residents of the State of Mississippi.

All such agents are hereby authorized to accept and acknowledge service of all process, whether mesne or final, in any action or proceedings against said Company in any of the Courts of said State of Mississippi; and it is hereby admitted and agreed that such service of process aforesaid shall be taken and held to be valid and sufficient in that belief, the same as if served upon said Company according to the laws and practice of said State, or of any other State; and all claims or right of error by reason of the manner of such service, is hereby expressly waived and relinquished.

177 Certificate will not be issued to firms. Each active member of the firm must hold certificate. Certificates are not transferrable.

SKANDINAVIA INSURANCE COMPANY,
(Signed) O. EHMANN,
Ass't. U. S. Manager.

Please make list alphabetically as to towns.

Copy ("C").

Name of Agent—Robert C. Wilkerson.
Place of Residence—Vicksburg.
County—2774.
Received March 31, 1923. $230.00. No. 651.

Check $.... enclosed herewith in payment of fees, for which kindly favor us with usual voucher.

178 Plaintiff next offered in evidence letter from Skandinavia Insurance Company, Ltd., signed O. Ehmann, Asst. U. S. Manager, of date March 28, 1923, to T. M. Henery, Insurance Commissioner of Mississippi, which in words and figures as follows: to-wit:

EXHIBIT "E."

Copy (D).

Skandinavia Insurance Company.
Copenhagen, Denmark.

No. 80 Maiden Lane, New York, March 28, 1923.

Hon. T. M. Henery,
Insurance Commissioner,
Jackson, Mississippi.

Dear Sir:

We are very much obliged for your favor of March 20th, from which we have duly noted that you will promtly re-admit this company to do a reinsurance business in Mississippi on receipt of the necessary blanks and fees, and we now take pleasure in handing you herewith the following papers:

a. Certificate of Compliance from the New York Insurance Department.

b. Annual Statement, per December 31, 1922, executed and sworn to on the regular Convention blank.

179 c. Certificate of Deposit from the New York Insurance Department.

d. Appointment of Mr. Robert C. Wilkerson of Vicksburg our resident agent, in formal compliance with your law.

e. Appointment of your good self as attorney for the service of process.

f. Application for admission in the State of Mississippi.

g. Check in the amount of $230.00 in payment of license and admission fees, as per bill attached.

This completes all the papers to be filed with your Department with the exception of the extract of statement and with regard to same would that you have inadvertently sent us blanks for a life company. If you will send us the proper blanks for a fire company, we shall immediately execute same and return to you, and hope that pending filing of this statement you will issue our license to do business in your State.

Yours very truly,

(Signed) O. EHMANN,
Ass't. U. S. Manager.

E. B.

180 Plaintiff next offered in evidence letter from Skandinavia Insurance Co., Ltd., dated July 17, 1923, signed Daniel F. Gorden, Assistant U. S. Manager, to T. M. Henery, Insurance Commissioner, Mississippi, as follows:

Copy (E).

United States Branch.
Skandinavia Insurance Company.
Copenhagen, Denmark.

No. 80 Maiden Lane, New York, July 17, 1923.

Hon. T. M. Henery,
Insurance Commissioner,
Jackson, Miss.

Dear Sir:

We are handing you herewith enclosed blank for the return of premiums for taxation purposes, covering the perod from March 1st, 1923, to June 30th, 1923.

Please be advised that this company transacts only the business of re-insurance and on all Mississippi business ceded to our company the direct writing company will assume and pay all taxes.

Yours very truly,

dfg b (Signed) DANIEL F GORDON

181 Plaintiff next offered in evidence tax statement, from the state of Mississippi, showing amount of gross premiums received by Skandinavia Insurance Company, Ltd., of Copenhagen, Denmark, from 1st day of March, 1923, to 31st day of June, 1923, received by the Insurance Department of Mississippi, June 31, 1923, as follows, to wit:

182 The State of Mississippi

Tax Statement Fire Insurance Company

Return of Gross Premiums received by the Skandinavia Insurance Company, Ltd., of Copenhagen, Denmark.

Total Amount of Gross premiums received in the State of Mississippi, from the 1 day of March, 1923, to the 31 day of June, 1923	$
Less Premiums Returned Policy Holders and Cancellations of Policies not taken	$
Less Reinsurance with authorized companies as per list on reverse side	$
Total	$
State Tax of two and three-fourths percent thereon	$

Tax for prevention of incendiary fires, one-fifth of one percent (from fire companies only) ..... $.....
Total Taxes Due ..... $.....

Received June 31, 1923. None.

183 Plaintiff next offered in evidence letter from Skandinavia Insurance Company, Ltd., signed by Daniel F. Gordon, Ass't. U. S. Manager, to T. M. Henery, Insurance Commissioner Mississippi, dated February 27, 1924, which is in words and figures as follows:

EXHIBIT "F"

Copy (G).

United States Branch.
Skandinavia Insurance Company
Copenhagen, Denmark

No. 80 Maiden Lane, New York, February 27, 1924.

Hon. T. M. Henery,
Insurance Commissioner,
Jackson, Mississippi.

Dear Sir:

We take pleasure in handing you herewith in connection with our making application for the renewal of our license for the ensuing year, the following documents as required by you:

1. Annual Statement.

2. Statement.

3. Application for Agent's License.

4. Tax Statement.

5. Check for $229.00 in payment of the enclosed bill, which kindly receipt and return.

184 In connection with the tax statement we beg to point out that this company restricts its transactions to reinsurance exclusively and does not issue any policies whatever. The ceding companies from whom we receive such reinsurance do not deduct the amount of premiums ceded to us from their tax reports and consequently all taxes are paid by such companies.

Wishing the enclosure safely to hand, we are,

Yours very truly,

(Signed) DANIEL F. GORDON,
Ass't. U. S. Manager.

B

Received Mar. 10, 1924, $229.00

Plaintiff next offered in evidence Tax Statement of State of Mississippi showing gross amount of premiums received by the Skandinavia Insurance Company, Ltd., in the State of Mississippi from the 1st day of March, 1923, to December 31, 1923—$7,739.10 sworn to by said company through its assistant manager for the United States, Daniel F. Gordon, which statement is in words and figures as follows, to-wit:

185 The State of Mississippi.

Tax Statement Fire Insurance Company.

Return of Gross Premiums received by the Skandinavia Insurance Company of Copenhagen, Denmark.

Total Amount of Gross Premiums received in the State of Mississippi, from the 1st day of March, 1923, to the 31st day of December, 1923		$ 7,739.10
Less Premiums Returned Policy Holders and Cancellations on Policies not taken	$2,517.95	
Less Reinsurance with authorized companies as per list on reverse side	$2,547.81	5,065.76
Total		$ 2,673.34
State Tax of Two and three-fourths per cent thereon		$.....
Tax for prevention of incendiary fires, one-fifth of one percent		$.....
(From fire companies only)		$.....
Total Taxes Due		$.....

Received Mar. 10, 1924. None.

State of New York,
County of New York.

Be it known, that on this, the .. day of ..... 1924, before me, a Notary Public, duly commissioned and sworn and residing in the City of New York
186 and the County and state aforesaid, personally appeared Daniel F. Gordon of the Ass't. U. S.

Manager of the Skandinavia Insurance Company of Copenhagen, Denmark, who, being duly sworn, deposes and says that the above is a full, true and correct statement of the gross amount of earnings, whether in cash or notes, received by the said insurance company through agents or otherwise in the State of Mississippi, from the 1st day of March, 1923, to the 31st day of December, 1923, without any deduction whatever for commissions expenses, losses, reinsurance, or for any other cause, except for premiums actually returned on canceled policies, and reinsurance placed with authorized companies .....

Sworn to and subscribed before me, this 28th day of February, 1924

LILLIAN B. BRADLEY,
Notary Public.

My commission expires March 30, 1925.

187 Plaintiff next offered in evidence certificate of the Skandinavia Insurance Company, Ltd., to the Insurance Commissioner of the state of Mississippi, appointing R. C. Wilkerson, Inc., of Vicksburg, Mississippi, as its agent, signed by said Skandinavia Insurance Co., Ltd., thru Daniel F. Gordon, Assistant U. S. Manager, and marked, Received March 10, 1924, which is in words and figures as follows, to-wit:

188 State of New York
City of New York.

February 28, 1924.

To the Insurance Comissioner of the State of Mississippi.

This is to certify, that the persons named below are the authorized agents for the transaction of the business

of fire and tornado re-insurance, at the places named, in the State of Mississippi, during the year 19.... for the Skandinavia Insurance Company Insurance Company of Copenhagen, Denmark in the ....., and you are hereby authorized to issue your Certificate of authority to them for that period. All said Agents are Bona Fide residents of the State of Mississippi.

As such agents are hereby authorized to accept and acknowledge service of all process, whether mense or final in any action or proceedings against said Company in any of the Courts of said State of Mississippi; and it is hereby admitted and agreed that such service or process aforesaid shall be taken and held to be valid and sufficient in that belief, the same as if served upon said Company according to the laws and practice of said State, or of any other State; and all claims or right of error by reason of the manner of such service, is hereby expressly waived and relinquished. Certificate will not be issued to firms. Each active member of a firm must hold certificate.

189 Certificates are not transferable.

Please make list alphabetically as to towns

Skandinavia Insurance Company
Daniel F. Gordon,
Asst. U. S. Manager.

Copy (1)

Name of Agent	Place of Residence	County
R. C. Wilkerson, Inc.,	Vicksburg	1062

Received
Mar. 10, 1924
$229.00
#452

Exhibit "A-2"

Check $.... enclosed herewith in payment of fees, for which kindly favor us with usual voucher.

Plaintiff next introduced tax statement from Skandinavia Insurance Company to Insurance Department of Mississippi sworn to by A. Geberth, Assistant U. S. Manager, for year 1924, which is words and figures as follows:

190 State of Mississippi

Copy (J)

State of New York,
County of New York.

Personally appeared before me, a Notary Public in and for the State and County aforesaid, A. GEBERTH, who states that he is Ass't U. S. Manager of Skandinavia Insurance Company of Copenhagen, Denmark, and that said Company accepted from its ceding companies reinsurance on Mississippi business to the amount of $1,548,163, on which the premiums amounted to $21,281.95, during the twelve months period ending December 31st, 1924, and that the said ceding companies have reported these premiums to the Insurance Department of the State of Mississippi and paid the proper amount of taxes thereon.

SKANDINAVIA INSURANCE CO.,
A. GEBERTH,
Ass't U. S. Manager.

Sworn to and subscribed before me, this 26th day of February, 1925.

LOUIS A. TRUSLOW,
Notary Public.

My commission expires March 30, 1927.

	Amount	Premiums
Gross amounts	$2,266,256	$29,188.26
Cancellations	718,093	7,906.31
Net Amounts	1,548,163	21,281.95

191 Plaintiff then introduced another Tax Statement from Skandinavia Insurance Co., Ltd., to the Insurance Department of Mississippi sworn to by A. Geberth, Assistant U. S. Manager, for the year 1924, being the same in substance as the preceding statement.

192 The State of Mississippi

Tax Statement Fire Insurance Company

Return of Gross Premiums received by the Skandinavia Insurance Company of Copenhagen, Denmark.

Total Amount of Gross Premiums received in the State of Mississippi, from the 1st day of January, 1924, to the 31st day of December, 1924	$29,188.26	
Less Premiums returned policy holders and cancellations on Policies not taken	$ 7,906.31	
Less Reinsurance with authorized Companies as per list on reverse side	16,847.72	24,754.03
Total		$.....
State Tax of two and three-fourths per cent thereon		$.....

Tax for preventation of incendiary, one-fifth of one per cent (from fire companies only) ..... $.....
Total Taxes Due ..... $.....

SKANDINAVIA INSURANCE CO.
GEBERTH, Asst. U. S. Manager.

Received
Mar. 16, 1925
None

193 State of New York,
County of New York.

Be it known, that on this, the 26th day of February, 1925, before me, a Notary Public, duly commissioned and sworn and residing in the City of New York, in the County and State aforesaid, personally appeared A. Geberth of the Skandinavia Insurance Company of Copenhagen, Denmark, who, being duly sworn, deposes and says that the above is a full, true and correct statement of the gross amount of earnings, whether in cash or notes, received by the said insurance company through agents or otherwise, in the State of Mississippi, from the 1st day of January, 1925, to the 31st day of December, 1924, without any deduction whatever for commissions, expenses, losses, reinsurance, or for any other cause, except for premiums actually returned on canceled policies, and reinsurance placed with authorized companies ....
.....

Sworn to and subscribed before me, this 26th day of February, 1925.

LOUIS A. TRUMAN,
Notary Public.

My commission expires March 30, 1927.

194 Plaintiff next introduced in evidence a letter from the Skandinavia Insurance Company, Ltd., signed by A. Geberth, Asst. Manager to T. M. Henery, Insurance Commissioner, dated Feb. 26, 1925, which is in words and figures as follows, to-wit:

United States Branch
Skandinavia Insurance Company
Copenhagen, Denmark.

No. 80 Maiden Lane
New York, February 26, 1925.

Copy (L)

Hon. T. M. Henery,
Insurance Commissioner,
Jackson, Mississippi.

Dear Sir:

We take pleasure in handing you herewith in connection with our making application for the renewal of our license for the ensuing year, the following documents as required by you:

1. Annual Statement.

2. Statement.

3. Application for Agent's License.

4. Tax Statement.

5. Check for $22.00 in payment of enclosed bill, which kindly receipt and return.

In connection with the tax statement we beg to point out that this company restricts its transactions to reinsurance exclusively and does not issue any policies whatever. The ceding companies from whom we receive such reinsurances do not deduct the amount of premiums ceded to us from their tax receipts and consequently all taxes are paid by such companies.

Wishing the enclosures safely to hand, we
195 beg to remain

Yours very truly,

(Signed) A. GEBERTH,
B Ass't U. S. Manager.

Plaintiff next ofered in evidence certificate of the Skandinavia Insurance Company, Ltd., to the Insurance Commissioner of Mississippi, certifying the appointment of R. C. Wilkerson, Inc., as agent in Mississippi, stamped Received March 16, 1925, and which certificate is in words and figures as follows, to-wit:

196 EXHIBIT A-2

State of New York,
City of New York.

February 26, 1926.

To the Insurance Commissioner of the State of Mississippi:

This is to certify, that the persons named below are authorized agents for the transaction of the business of fire and tornado reinsurance, at the places named, in the State of Mississippi, during the year 19...., for the Skandinavia Insurance Company of Copenhagen, in the

Kingdom of Denmark, and you are hereby authorized to issue your Certificte of authority to them for that period. All said agents are Bona Fide, residents of the State of Mississippi.

All such agents are hereby authorized to accept and acknowledge service of all process, whether mense or final, in any action or proceedings against said Company in any of the Courts of said State of Mississippi; and it is hereby admitted and agreed that such service of process aforesaid shall be taken and held to be valid and sufficient in that belief, the same as if served upon said Company according to the laws and practice of said State or of any other State; and all claims or right of error by reason of the manner of such service, is hereby expressly waived and relinquished.

Certificate will not be issued to firms. Each active member of a firm must hold certificate.

197 Certificates are not transferable.

Please make list alphabetically as to towns.

Copy (M)

Skandinavia Insurance Company
A. Geberth,
Ass't U. S. Manager.

Name of Agent	Place of Residence	County
R. C. Wilkerson, Inc.,	Vicksburg	5498

Received
March 16, 1925
$229.00
#428

Check $.... enclosed herewith in payment of fees, for which kindly favor us with usual voucher.

198 Plaintiff next offered in evidence letter from Skandinavia Insurance Company, Ltd., signed by Sumner Ballard, United States Manager, addressed to T. M. Henery, Insurance Commissioner, of date April 21, 1925, which letter is in words and figures as follows:

EXHIBIT "B".

United States Branch
Skandinavia Insurance Company
Copenhagen, Denmark.

No. 80 Maiden Lane
New York, April 21st, 1925.

Copy (X)

Hon. T. M. Henery,
Insurance Commissioner,
Jackson, Mississippi.

Dear Sir:

We beg to acknowledge receipt of your favor of the 17th instant together with attached certified copy of summons served on you as Attorney for Service, by the Sheriff of Hinds County, Mississippi.

Yours very respectfully,

Signed SUMNER BALLARD,
United States Manager.

FK K

199 Plaintiff next introduced in evidence letter from the Skandinavia Insurance Company, Ltd., signed by Sumner Ballard, United States Manager, ad-

dressed to T. M. Henery, Insurance Commissioner, Mississippi, dated May 26, 1925, which letter is in words and figures as follows:

EXHIBIT "B".

Skandinavia Insurance Company
Copenhagen, Denmark

No. 80 Maiden Lane
New York, May 26th, 1925.

Copy (O)

Hon. T. M. Henery,
Insurance Commissioner,
Jackson, Mississippi.

Dear Sir:

We beg to acknowledge receipt of your favor of the 23rd instant together with certified copy of summons served on you as Attorney for Service by the Sheriff of Hinds County, Mississippi, which summons was issued on May 21st, 1925.

Yours very truly,
(Signed) SUMNER BALLARD,
United States Manager.

Fk-K

200 Plaintiff next introduced in evidence application of the Skandinavia Insurance Company, Limited, to the Insurance Department of Mississippi for license to do business in the State of Mississippi for the year ending February 28, 1927, sworn to by A. Gebserth, Assistant U. S. Manager, which application is in words and figures as follows, to-wit:

201 EXHIBIT "C".

Application for License Fire Insurance Company.

State of Mississippi,
Insurance Department.

Copy (P)

The Skandinavia Insurance Company of the City of New York, and State of New York by A. Geberth, its Ass't U. S. Manager, does hereby apply for license to do business in the State of Mississippi for the year ending on the 28th day of February, 1927.

And I, A. Geberth, Ass't U. S. Manager, Secretary of said Company, do solemny swear that it, the said Company, hereby accepts in good faith the terms and obligations of the Insurance Laws of said States as a part of the consideration of its license; and that said company will not reinsure any risk or part thereof, taken by it on any property located in Mississippi, with any company not authorized to transact the business of fire insurance in said State except as provided by Sec., 2607, Code 1906. It is understood and agreed that said license, if issued, may be revoked as provided in said law.

SKANDINAVIA INSURANCE COMPANY,
A. GEBERTH, Ass't U. S. Manager.

Sworn to and subscribed before me, this 25 day of February, 1926.

(Signed) LOUIS A. TRUSLOW, Notary Public for Kings County.

(Seal)

202 Plaintiff next introduced in evidence letter from Skandinavia Insurance Company, Ltd., signed A. Geberth, Assistant U. S. Manager, of date February 25, 1926, addressed to T. M. Henery, Insurance Commissioner, of Mississippi, as follows, to-wit.

EXHIBIT "J".

United States Branch
Skandinavia Insurance Company
Copenhagen, Denmark.

No. 80 Maiden Lane
New York, February 25, 1926.

Copy (Q)

Sumner Ballard,
United States Manager.

Hon. T. M. Henery,
Insurance Commissioner,
Jackson, Mississippi.

Dear Sir:

We take pleasure in handing you herewith in connection with our making application for the renewal of our license for the ensuing year, the following documents as required by you:

1. Annual Statement.

2. Statement.

3. Application for License.

4. Tax Statement.

5. Application for Agent's License.

6. Check for $229.00 in payment of fees.

203 receipt of which kindly acknowledge.

In connection with the tax statement, we beg to point out that this company restricts its transactions to reinsurance exclusively and does not issue any policies whatever. The ceding companies from whom we receive such reinsurance do not deduct the amount of premiums ceded to us from their tax reports and consequently all taxes are paid by such companies.

Wishing the inclosure safely in your hands, we beg to remain,

Yours very truly,

(Signed) A. GEBERTH,
Ass't U. S. Manager.

K encls

204 Plaintiff next introduced in evidence certificate from the Skandinavia Insurance Company, Ltd., to the Insurance Commissioner of Mississippi certifying the appointment of R. C. Wilkerson, Inc., of Vicksburg, Mississippi, as its agent in Mississippi during the year 1926, marked received Mar. 3, 1926, and which certificate is in words and figures as follows, to-wit:

205 EXHIBIT "A-2".

State of New York,
City of New York.

Feb., 25, 1926.

To the Insurance Commissioner of the State of Mississippi:

This is to certify, that the persons named below are the authorized agents for the transaction of the business of fire and tornado re-insurance, at the places named, in the State of Mississippi, during the year 1926, for the Skandinavia Insurance Company of ..... in the State of ....., and you are hereby authorized to issue your Certificate of authority to them for that period. All said agents are Bona Fide residents of the State of Mississippi.

All such agents are hereby authorized to accept and acknowledge service of all process, whether mense or final, in any action or proceedings against said Company in any of the Courts of said State of Mississippi; and it is hereby admitted and agreed that such service of process aforesaid shall be taken and held to be valid and sufficient in that belief, the same as if served upon said Company according to the laws and practice of said State, or of any other State; and all claims or right of error by reason of the manner of such service, is hereby expressly waived and relinquished.

Certificate will not be issued to firms. Each active member of a firm must hold certificate. Certificates are not transferable. Please make list alphabetically as to towns.

SKANDINAVIA INSURANCE CO.
..... President.
..... Secretary.
A. GEBERTH,
Ass't U. S. Manager.

Copy (R)

Name of Agent Place of Residence County
R. C. Wilkerson, Inc., Vicksburg 716
Received March 3, 1926, $229.00
#325

Check $.... enclosed herewith in payment of fees, for which kindly favor us with usual voucher.

206 Plaintiff next introduced in evidence Tax Statement from the Skandinavia Insurance Company, Ltd., wherein it shows re-insurance on Mississippi business for the twelve months ending December 31, 1925, in the amount of $2,786,527, on which the premiums amounted to $47,819.57 during said period, together with the tax statement, which statements are sworn to by A. Geberth, Assistant U. S. Manager, and are in words and figures as follows, to-wit:

207 Insurance Department
State of Mississippi

Copy (8)

State of New York,
County of New York.

Personally appeared before me, a Notary Public in and for the State and County aforesaid, A. GEBERTH, who states that he is Ass't U. S. Manager of Skandinavia Insurance Company of Copenhagen, Denmark, and that said company accepted from its ceding companies re-insurance on Mississippi business to the amount of $2,786,527 on which the premiums amounted to $47,819.57, during the twelve months period ending December 31, 1925, and that the said ceding companies have reported

these premiums to the Insurance Department of the State of Mississippi and paid the proper amount of taxes thereon.

SKANDINAVIA INSURANCE CO.,
A. GEBERTH,
Ass't U. S. Manager.

Sworn to and subscribed before me, this 25th day of February, 1926.

(Signed) LOUIS A. TRUSLOW,
Notary Public.

My commission expires March 30, 1927.

	Amount	Premiums
Gross Amounts	$4,357,697	$54,870.58
Cancellations	1,571,170	17,051.01
Net Amounts	2,785,527	47,819.57

208 Copy (T)

The State of Mississippi
Tax Statement Fire Insurance Company
Return of Gross Premiums Received by the Skandinavia Insurance Company of Copenhagen, Denmark.

Total Amount of Gross Premiums received in the State of Mississippi, from the 1 day of January, 1925, to the 31 day of December, 1925	$64,870.58
Less Premiums returned Policy Holders and Cancellations on Policies not taken	$17,015.01

Less reinsurance with authorized companies as per list on reverse side	$17,048.76	$34.099.77
Total		$30,770.81
State Tax of two and three-fourths per cent thereon		$.....
Tax for prevention of incendiary fires, one-fifth of one per cent (from fire companies only) ..		$.....
Total Taxes Due		$.....

SKANDINAVIA INSURANCE CO.,
A. GEBERTH,
Ass't U. S. Manager.

Received Mar. 1926.
None.

State of New York,
County of New York.

Be it known, that on this, the 25th day of February, 1926, before a Notary Public, duly commissioned and sworn and residing in the City of New York, in the County and State aforesaid.

Personally appeared A. Geberth, Ass't U. S.
209 Manager of the Skandinavia Insurance Company of Copenhagen, Denmark, who being duly sworn, deposes and says that the above is a full, true and correct statement of the gross amount of earnings, whether in cash or notes, received by the said insurance company through agents or otherwise, in the State of Mississippi, from the 1st day of January, 1925, to the 31st day of December, 1926, without any deduction for commissions, expenses, losses, reinsurance, or for any other cause, except for premiums actually returned on canceled policies, and reinsurance placed with authorized companies.

Sworn to and subscribed before me, this 25th day of February, 1926.

LOUIS A. TRUSLOW,
Notary Public.

My commission expires March 30th, 1927.

Schedule of re-insurance with authorized companies in the State of Mississippi, from the 1st day of January, 1925, to the 31st day of December, 1925.

Name of Company—Address	Amount	Premiums
Internations Ins. Co.,		
210 N. Y.	251,577	3,458.31
Southern Home Ins. Co.,		
S. C.	77,409	1,064.10
Michigan Millers Mutual, Mich.	560.961	8,705.60
National Union Fire, Pa.	241.776	3,820.75
	$1131.723	$17,048.76

Received Mar. 3, 1926.
None.
Filed May 13, 1927.

211 All of the foregoing documents were introduced in evidence by the Plaintiff under the certificate of T. M. Henery, Insurance Commissioner of Mississippi, of date February 24, 1927, said certificate being as follows:

EXHIBIT "A".

Insurance Department
State of Mississippi
T. M. Henery.
Insurance Commissioner
Jackson, Miss.

I, T. M. Henery, Insurance Commissioner of the State of Mississippi, do hereby certify that the attached and following marked "(A)" to (T), inclusive, are true and correct copies of correspondence and or records of the Skandinavia Insurance Company of Copenhagen, Denmark, and now on file in the Insurance Department of Mississippi.

Witness my signature and seal of office this the 24th day of February, 1927, at Jackson, Mississippi.

T. M. HENERY,
Insurance Commissioner.

And all of its foregoing documents introduced in evidence by plaintiff on trial of the cause also constitute Exhibits to the plaintiff's answer to defendant's motion to quash the return on process on defendant herein, and also as exhibits to the replications filed by plaintiff to defendant's pleas in abatement, and, as such exhibits, were filed, attached together in the order introduced in evidence, under the foregoing certificate, on the 13th day of May, 1927, in this cause, as shown by filing stamp of that date, signed "B. L. Todd, Jr., Clerk, by Geo. P. Money, Deputy."

212

213 By Mr. Chalmers Potter, for the Plaintiff:

Then we introduce the annual statements of the Skandinavia Insurance Company, of Copenhagen, Denmark, for the years 1923, 1924, and 1925, under the certificate of the Insurance Commissioner. All of these are the same, except different amounts for each year.

An abstract or summary of each of said annual statements is as follows, to-wit:

The annual statement of the Skandinavia Insurance Company, Limited, of Copenhagen, in the Kingdom of Denmark made to the Insurance Department of the State of Mississippi for the year ended December 31, 1923, received by said Department May 7, 1924, and copy thereof filed in this cause on May 13, 1927, and offered in evidence by plaintiff, and said copy being certified to by T. M. Henery, Insurance Commissioner, under the seal of his office, in the following words:

Insurance Department,
State of Mississippi.

T. M. Henery, Insurance Commissioner,
Jackson, Mississippi.

214 I, T. M. Henery, Insurance Commissioner of the State of Mississippi, do certify that the attached is a true and correct copy of annual statement as of December 31, 1923, of the Skandinavian Insurance Company of Copenhagen, Denmark, as on file in the Insurance Department of Mississippi.

Witness my signature and seal of office, this 24th day of February, 1927, in the City of Jackson, Mississippi.

T. M. HENERY,
(Seal) Insurance Commissioner.

Shows as follows:

Said annual statement shows date of incorporation home office, Copenhagen, Denmark, that it commenced to do business in the United States in 1917, its officers, its directors or trustees; the amount of its capital stock; its income; its disbursements; its ledger assets; non ledger assets; assets not admitted; its liabilities; its risks and premiums on all business effective on and after January 1, 1921, recapitulation of fire risks and premiums on all business effective on and after January 1, 1921, and on perpetual risks wherever written; recapitulation of gross premiums on all unexpired risks other than fire risks; and general interrogatories and its answers thereto; statement of its business in the State of Mississippi during 1923; underwriting and investment exhibited showing the sources of the increase and decrease in surplus during 1923; its schedule
215 of deposits made with any government, province, state, district, county, municipality, corporation, firm or individual; except regular deposits in banks and trust companies subject to check; Schedule E showing name and location of company and amount recoverable for reinsurance on paid and unpaid losses; Schedule showing all bonds owned by it on December 31, 1923; schedule showing that it owned no stocks on December 31, 1923; summary of its bonds and stocks; schedule showing all bonds and stocks acquired by it during 1923; schedule showing all bonds sold, redeemed or otherwise disposed of during 1923; schedule showing all balances, according to company records carried in each bank or trust company on the last day of each month of the year 1923; and page 9 of said annual statement of said company, which touches the question of doing of business in the State of Mississippi by the Skandinavia Insurance Company, Limited, during the year 1923, is in words and figures as follows, to-wit:

Business in the State of Mississippi During 1923.
Risks Written.

(1) Class.	(2) Gross Risks Written.	(3) Risks Canceled.	(4) Reinsurance in Companies Authorized in Mississippi.	(5) Total Deductions Column 3 Plus Column 4.	(6) Net Risks Written Col. 2 Minus Column 5.
Fire	$462,582	$206,482	$124,452	$330,934	$131,648
Tornado, Windstorm and Cyclone	70,609	34,115	10,947	45,062	25,547
Sprinkler Leakage	2,475	500	593	1,093	1,382
Totals	$535,666	$241,097	$135,992	$377,089	$158,577

121

Premiums Received.

(1) Class.	(2) Gross Premiums on Risks Written.	(3) Return Premiums.	(4) Premiums for Reinsurance in Companies Authorized in Mississippi.	(5) Total Deductions Column 3 Plus Column 4.	(6) Net Premiums Received Column 2 Minus Col. 5.
Fire	$7,194.86	$2,357.64	$2,432.64	$4,790.28	$2,404.58
Motor Vehicles	32.66	0	9.80	9.80	22.86
Tornado, Windstorm and Cyclone	510.78	160.29	105.14	265.43	245.35
Sprinkler Leakage	.80	.02	.23	.25	.55
Totals	$7,739.10	$2,517.95	$2,547.81	$5,065.76	$2,673.34

(1)	(2)	(3)	(4)	(5)	(6)	(7)
217		Deduct Losses on Risks			Deduct Losses on Risks	
	Losses	Reinsured	Net Losses		Reinsured	Net Losses
	Paid	in Companies	Paid		in Authorized	Incurred
Class.	Deducting	Authorized	Column 2	Losses	in Miss.	Column 5
	Salvage.	in Miss.	Minus	Incurred.	Companies.	Minus
			Column 3.			Column 6.
Fire	$8,921.45	$3,203.19	$5,718.62	$11,540.30	$4,138.84	$7,401.40
Tornado, Windstorm & Cyclone	1,725.71	517.72	1,207.99	1,725.71	517.72	1,207.99
Sprinkler Leakage..	0	0	0	.62	.19	
Totals	$10,647.16	$3,729.91	$6,926.25	$13,266.63	$4,656.75	8,609.88

218 State of New York,
County of New York.

Daniel F. Gordon, assistant U. S. Manager of the Skandinavia Insurance Company, U. S. Department, being duly sworn, deposes and says that he is the above described officer of the said company and that on the thirty first day of December last, all the above described assets were the absolute property of the said company free from any liens or claims thereon, except as above stated, and that the foregoing statement, with the schedules and explanations therein contained, annexed or referred to are a full and correct exhibit of all of the assets, liabilities, income and disbursements, and of the condition and affairs of the said company on said 31st day of December, last, and for the year ended on that date, to the best of his information, knowledge and belief.

DANIEL F. GORDON,
Assistant U. S. Manager.

Subscribed and sworn to before me, this 28th day of February, 1924.

LILLIAN B. BRADLEY,
(Seal) Notary Public, Queen's County, No. 3846 certificate filed in New York County, Ny. Co. Clerk's No. 969, Ny. Co. Reg. No. 5044, King's Co. Clk., No. 97, King's Co. Reg. No. 5415. Commission expires March 30, 1929.

219 The Annual Statement of the Skandinavia Insurance Company, Limited, of Copenhagen,

Denmark, made to the Insurance Department of the State of Mississippi, for the year ended December 31, 1924, and copy of which was filed in this cause on May 13, 1927, and offered in evidence by plaintiff as aforesaid, and said copy being certified to by T. M. Henery, Insurance Commissioner of the State of Mississippi, under the seal of his office under date February 24, 1927, as being a true and correct copy of the Annual Statement as of December 31, 1924, of the Skandinavia Insurance Company of Copenhagen, Denmark, as then on file in the Insurance Department of Mississippi, shows all details of its business during the year 1924, the date of its commencing to do business in the United States, in 1917, its officers, directors or trustees, the amount of its capital stock, its income, disbursements, ledger assets and non ledger assets, assets not entitled, its liabilities, its risks and premiums on all business effective after January 1, 1921, amount of its bonds, deposits, of all kinds, and all other information as shown and scheduled in its aforesaid Annual Statement for the year 1923, the reports being similar and covering the same information, except as to differing amounts and totals of items; and page 9 of said Annual Statement for the year 1924 touching the question of the doing business by the Skandinavia Insurance Company, Ltd., in the State of Mississippi during said year 1924, being in words and figures as follows, to-wit:

Business in the State of Mississippi During 1924.

Risks Written.

(1) Class.	(2) Gross Risks Written.	(3) Risks Canceled.	(4) Reinsurance in Companies Authorized in Mississippi.	(5) Total Deductions Column 3 Plus Column 4.	(6) Net Risks Written Column 2 Minus Column 5.
Fire	$1,885,492	$641,669	$1,253,831	$1,895,500	$10,008
Tornado, Windstorm and Cyclone	349,664	71,499	83,449	154,948	194,716
Sprinkler Leakage	31,100	4,925	7,835	12,778	18,322
Totals	$2,266,256	718,093	$1,345,153	$2,035,226	$203,030

Premiums Received.

(1) Class.	(2) Gross Premiums on Risks Written.	(3) Return Premiums.	(4) Premiums for Reinsurance in Companies Authorized in Mississippi.	(5) Total Deductions Column 3 Plus Column 4.	(6) Net Premiums Received Column 2 Minus Column 5.
Fire	$27,029.33	$7,656.83	$16,274.89	$23,931.72	$3,097.61

Tornado, Windstorm and Cyclone	2,144.53	249.36	568.55	817.91	1,326.62
Sprinkler Leakage	14.40	0.12	4.28	4.40	10.00
Totals					

Losses Paid and Losses Incurred.

(1) Class	(2) Losses Paid Deducting Salvage	(3) Deduct Losses on Risks Reinsured in Companies Authorized in Mississippi	(4) Net Losses Paid Column 2 Minus Column 3	(5) Losses Incurred	(6) Deduct Losses on Risks Reinsured in Companies Authorized in Mississippi	(7) Net Losses Incurred Column 5 Minus Column 6
Fire	$15,138.25	$7,652.86	$7,485.39	$18,615.52	$10,293.23	$8,322.29
Tornado, Windstorm & Cyclone	75.62	22.69	52.93	76.37	22.92	53.45
Sprinkler Leakage	2.22	.66	1.56	1.60	.47	1.13
Totals	$15,216.09	$7,672.21	$7,539.88	$18,693.49	$10,316.62	$8,376.87

Continuation of page 9 of Annual Statement of Skandinavia Ins. Co., Ltd. for year 1924.

State of New York,
County of New York.

A. Geberth, Assistant U. S. Manager of the Skandinavia Ins. Co., U. S. Dept., being duly sworn, deposes and says that he is the above described officer of said company, and that on the thirty-first day of December, last, all the above described assets were the absolute property of the said company, free and clear from any liens or claims thereon, except as above stated, and that the foregoing statement with the schedules and explanations therein contained, annexed or referred to, are a full and correct exhibit of all the assets, liabilities, income and disbursements, and of the condition and affairs of the said company on the said thirty first day of December, last, and for year ended on that date, according to the best of his information, knowledge and belief.

SKANDINAVIA INSURANCE CO., U. S. DEPT.
A. GEBERTH,
Asst U. S. Manager.

Subscribed and sworn to before me, this 26th day of February, 1925

(Seal)

LOUIS A. TINSLOW,
Notary Public for King's County. Cert. filed in New York County.

The Annual Statement of the Skandinavia Insurance Company, Limited, of Copenhagen, in the Kingdom of Denmark, made to the Insurance

Department of the State of Mississippi for the year ended December 31, 1925, and copy of which was filed in this cause on May 13, 1927, and offered in evidence by plaintiff, and said copy being certified by T. M. Henery, Insurance Commissioner of the State of Mississippi, under the seal of his office on February 24, 1927, as being a true and correct copy of the Annual Statement as of December 31, 1925, of the Skandinavia Insurance Company of Copenhagen, Denmark, as on file in the Insurance Department of Mississippi, shows the date of incorporation, home office, date of beginning to do business in the United States, in 1917, its officers, directors or trustees, the amount of its capital stock, its income, disbursements, ledger assets, non ledger assets, its liabilities, its risks and premiums on all business effective on and after January 1, 1921, amount of its bonds, deposits, and all other information detailing its business for the year 1925 as set forth and scheduled in its aforesaid Annual Statement for the year 1923, except that the amounts are different for said years; and page 9 of said Annual Statement for the year 1925, touching the question of doing business in the State of Mississippi by the Skandinavia Insurance Company, Limited, is in words and figures as follows, to wit:

Business in the State of Mississippi During 1925.

(1) Class.	(2) Gross Risks Written.	(3) Risks Canceled.	(4) Reinsurance in Companies Authorized in Mississippi.	(5) Total Deductions Column 3 Plus Column 4.	(6) Net Risks Written Col. 2 Minus Column 5.
Fire	$3,909,510	$1,413,572	$1,131,723	$2,545,295	$1,364,215
Tornado, Windstorm and Cyclone	402,770	137,785	0	137,785	264,985
Sprinkler Leakage	45,052	19,813	0	19,813	25,229
Hail	375	0	0	0	375
Totals	$4,357,697	$1,571,170	$1,131,723	$2,702,893	$1,654,804

Premiums Received.

(1) Class.	(2) Gross Premiums on Risks Written.	(3) Return Premiums.	(4) Premiums for Reinsurance in Companies Authorized in Mississippi.	(5) Total Deductions Column 3 Plus Column 4.	(6) Net Premiums Received Col. 2 Minus Column 5.
Fire	$62,614.56	$16,534.10	$17,048.76	$33,582.86	$29,031.70

Tornado, Windstorm and Cyclone	2,236.93	512.51	0	512.51	1,724.42
Hail	.94	0	0	0	0.94
Sprinkler Leakage	18.15	4.40	0	4.40	13.75
Totals	$64,870.58	$17,051.01	$17,048.76	$34,099.77	$30,770.81

Losses Paid and Losses Incurred.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Class.	Losses Paid Deducting Salvage.	Deduct Losses on Risks Reinsured in Companies Authorized in Miss.	Net Losses Paid Column 2 Minus Column 3.	Losses Incurred.	Deduct Losses on Risks Reinsured in Companies Authorized in Mississippi.	Net Losses Incurred Column 5 Minus Column 6.
Fire	$14,353.22	$11,882.81	$2,470.41	$13,844.50	$12,762.79	$1,081.77
Tornado, Windstorm and Cyclone	12.29	0	12.29	12.34	0.23	12.57
Sprinkler Leakage..	0	0	0	0	0	
Totals	$14,365.51	$11,882.81	$2,482.70	$13,856.90	$12,762.56	$1,094.34

Continuation of page 9 of Statement of Skandinavia Ins. Co.

226 State of New York,
County of New York.

A. Geberth, Assistant U. S. Manager of the Skandinavia Ins. Co. U. S. Department, and says that he is the above described officer of said company, and that on the thirty first day of December, last, all the above described assets were the absolute property of the said company free and clear from any liens or claims thereon, except as above stated, and that the foregoing statement, with the schedules and explanations therein contained annexed or referred to are a full and correct exhibit of all the assets, liabilities, income and disbursements and of the condition and affairs of the said company on the thirty first day of December, last, and for the year ended on that date, according to the best of his information, knowledge and belief.

SKANDINAVIA INSURANCE CO.
(Signed) A. GEBERTH, Asst. U. S. Manager.

Subscribed and sworn to before me, this 25th day of February, 1926.

LOUIS A. TINSLOW,
(Seal) Notary Public for King's County, Ctf. filed in N. Y. County.

227 The foregoing three Annual Statements of the Skandinavia Insurance Company introduced by the plaintiff on the trial of the defendant to quash return of process on it herein, being exhibited thereto as follows:

Annual Statement for the year 1923 was Exhibit "G".
Annual Statement for the year 1924 for Exhibit "H".
Annual Statement for the year 1925 was Exhibit "I".

228 CHALMERS POTTER, being produced and first duly sworn, testified as a witness for the plaintiff, as follows:

During December, of 1920, I think it was, Judge Clayton D. Potter and myself, for and on behalf of the State Revenue Agent, filed suit against all of the insurance companies doing business in the State of Mississippi for violating the anti trust laws of Mississippi. Among these was the Skandinavia Insurance Company, in connection with other companies defendant in that suit in the State of Mississippi, which was not terminated until the last half of 1922 or the first part of 1923; and they hired for that purpose in the State of Mississippi Mr. Bob McLaurin, Mr. Will Watkins, Mr. Bomar Harris, together with Col. Thompson, of Dallas, Texas, and that case was constantly in the Courts and was being defended by those gentlemen, and the Skandinavia Insurance Company was a defendant in that law suit from the last part of 1920 to the last of 1922 or the first part of 1923.

By the Court:

How did you get service on them?

A. Service on the Insurance Commissioner.

Cross examination was waived.

Witness excused.

By Mr. Garner W. Green:

The plaintiff rests.

229 By Mr. Pillans:

The defendant now asks in writing a peremptory instruction for the defendant.

By the Court:

Under the testimony, I do not think that the defendant has been doing business in Mississippi, consequently, the general Mississippi statute with reference to service on agents in transitory does not apply. And, further, I do not think the Mississippi insurance statute with reference to service is applicable to business transacted outside of Mississippi.

I am going to give the peremptory instruction as requested. As stated previously, I think this is a question that should have been passed upon by the Court instead of by the jury, as it is a question of jurisdiction; but as the attorneys on both sides have proceeded on the theory that the plea to the jurisdiction and the traverse have raised an issue of fact to be passed on by the jury, and as the jury have been impaneled and heard the testimony, I will let the case take that course and give a peremptory instruction to the jury to find for the defendant, to which the plaintiff excepts and the exception is allowed.

I will just read the instruction:

230 "The Court charges the jury to find for the defendant"; that is, to find that the defendant was not doing business within the State of Mississippi. The decision would have been the same if the case had been tried before the Court without a jury; that is, I

would find, and do now find, that the defendant, Skandinavia Insurance Company, was not doing business within the State of Mississippi, but had simply been authorized to do business.

And the jury, having received the instruction of the Court, presently returned into Court, the following verdict:

We, the jury, find for the defendant, that it was not doing business within the State of Mississippi."

and thereupon judgment was entered, finally dismissing the cause of action of plaintiff and taxing plaintiff with the costs of the Court; to which action of the Court, the plaintiff then and there excepted, in open Court before the jury retired and the exception was allowed; and, on the 8th day of September, 1927, the plaintiff filed a motion for a new trial, in words and figures as follows, to wit:

231 MOTION FOR NEW TRIAL.

(Title Omitted.)

Comes the plaintiff herein and moves the Court to grant it a new trial, and assigns the following grounds for said motion, to wit:

(1) The Court erred in sustaining the demurrer of the defendant to plaintiff's replications II to X inclusive, and to each of them.

(2) The Court erred in giving a peremptory instruction to the jury to find for the defendant on the issue joined by the plaintiff's traverse to the defendant's plea to the jurisdiction.

(3) The Court erred in abating plaintiff's cause of action and dismissing the suit.

(4) Other causes to be assigned on hearing hereof.

JOHN M. LEE,
GREEN, GREE & POTTER,
MIZE & MIZE & THOMPSON,
Attorneys for Plaintiff.

Filed Sept. 8, 1927.

232 That said motion for a new trial was by the Court overruled, to which action of the Court the plaintiff excepted, which exception was allowed and the Court, upon motion of plaintiff, was granted sixty days in which to perfect and present its bill of exceptions as shown by the following order:

233 ORDER OVERRULING MOTION FOR NEW TRIAL.

(Title Omitted.)

Came on this day this cause to be heard upon plaintiff's motion for a new trial, and the Court having heard and considered the same, and being of opinion that the same should be overruled, it is hereby ordered and adjudged that plaintiff's motion for a new trial be and

the same is hereby overruled, and upon motion by plaintiff, it is hereby granted sixty days in which to perfect and present to this Court its bill of exceptions.

Ordered and adjudged this the 8th day of September, 1927.

E. R. HOLMES, Judge.

Filed Sept. 9, 1927.

234 JUDGMENT DISMISSING CAUSE FOR WANT OF JURISDICTION.

(Title Omitted.)

This cause came on to be heard on this the 8th day of September, 1927, on the plaintiff's traverse to the defendant's pleas to the jurisdiction; and came a jury of good and lawful men, composed of Peter Bellande and eleven others, who having been duly impaneled and sworn, and having heard the evidence in the case, and after having heard the evidence and received the charge of the Court retired to consider of their verdict, and presently returned into open Court the following verdict, to-wit:

"We, the jury, find for the defendant."

It is therefore ordered and adjudged by the Court that the action of plaintiff be abated and the cause dismissed for want of jurisdiction over the person of the defendant, and that the plaintiff be taxed with all costs; for which execution may issue.

E. R. HOLMES, Judge.

Filed Sept. 9, 1927.

235 And now, having tendered this bill of exceptions, plaintiff prays that the same may be received and signed, by Judge Edwin R. Holmes, Judge of District Court aforesaid, and made a part of the record in the above styled cause, which is this day accordingly done, within the time permitted by the order of the Court to prepare and present bill of exceptions, and I am satisfied and so certify that such parts of the testimony of witnesses as are stated in the form of question and answer in this bill of exception should be so stated in order to enable the Appellate Court properly to understand and weigh the testimony of such witnesses.

Signed, ordered, and allowed, this the 4th day of November, 1927.

E. R. HOLMES,
District Judge.

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236 PETITION FOR WRIT OF ERROR.

(Title Omitted.)

Morris & Company, plaintiff in the above entitled cause, feeling itself aggrieved by the judgment of the Court entered in the above entitled cause at the September Term 1927, comes now by its attorneys and petitions the Court for an order allowing this plaintiff to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, under and according to the laws of the United States in this behalf made and provided, and also that an order be made fixing the amount of security which

plaintiff shall give upon said writ of error, and that upon the giving of such security the writ of error be granted.

And your petitioner will ever pray.

JOHN M. LEE,
SIDNEY MIZE,
MARCELLUS GREEN,
CHALMERS POTTER,
GARNER W. GREEN,
Attorneys of record for
Petitioner.

Filed Nov. 21, 1927.

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237 ORDER GRANTING WRIT OF ERROR.

(Title Omitted.)

This day this cause came on to be heard on the petition of Morris and Company, a corporation for the allowance of a writ of error from the judgment of the said District Court rendered in the above styled cause at the September 1927 term of said Court, in favor of said Skandinavia Insurance Company, Ltd., and against said Morris & Company, with assignment of errors therein, it is ordered that a writ of error be and is hereby allowed, to have reviewed in the United States Circuit Court of Appeals for the Fifth Circuit the said judgment theretofore entered herein, and that the amount of the bond for said writ of error be and is fixed at Five Hundred Dollars ($500.00) to be conditioned according to law, with surety, to be approved by the Clerk of said District Court.

E. R. HOLMES, Judge.

Filed Nov. 21, 1927.

238 ASSIGNMENT OF ERROR.

(Title Omitted.)

Now comes the plaintiff and files the following assignment of errors upon which it will rely in the prosecution of writ of error in the above entitled cause.

1. The District Court erred in not taking jurisdiction, and in abating the action of the plaintiff, because,

A. The defendant, Skandinavia Insurance Company, Ltd., consented to be sued in the State of Mississippi in this cause of action, both by the Power of Attorney granted the Insurance Commissioner, and by the Power of Attorney granted the local agent; service being had on both;

B. Because the Skandinavia Insurance Company, Ltd., was doing business in Mississippi at the time of the service of this writ;

2. The District Court erred in giving a peremptory instruction for the defendant, because;

A. Said defendant has consented to be sued;

B. Said defendant was liable to suits by the acts done;

C. Said defendant waived its immunity from suit in this cause by, first, appearing by attorney and
239 not in person, and second, by doing all things as appears by the record herein.

3. The District Court erred in not extending back the defendant's demurrers to the replications to defendant's plea and holding the same insufficient in law.

4. The District Court erred in not allowing the plaintiff to demur to the first plea of the defendant.

5. The District Court erred in not holding that defendant became subject to the jurisdiction of the Court by the interposition of its second plea.

6. The District Court erred in sustaining the demurrers of the defendant to each and everyone of the replications interposed by the plaintiff to the defendant's pleas severally and respectively.

7. The District Court erred in not retaining jurisdiction, and for other reasons to be assigned at the hearing.

Wherefore plaintiff prays the judgment may be reversed and the cause remanded for further proceedings, in accordance with law and justice.

JOHN M. LEE,
SIDNEY MIZE,
MARCELLUS GREEN,
CHALMERS POTTER,
GARNER W. GREEN,
Attorneys for Petitioner.

Filed Nov. 21, 1927.

242 WRIT OF ERROR BOND.

(Title Omitted.)

Know all men by these presents: That we, Morris & Company, a corporation, as principal, and Garner W. Green and Chalmers Potter are held and firmly bound unto the Skandinavia Insurance Company, Ltd., a corporation, defendant, in the above entitled cause, in the sum of Five Hundred ($500.00) Dollars, to be paid to the said Skandinavia Insurance Company, Ltd., its successors and assigns, to which payment well and truly to be made we bind ourselves firmly, jointly and severally.

Sealed and dated this 22nd day of November, 1927.

Whereas, the above plaintiff has sued out a writ of error to the United States Circuit Court of Appeals of the Fifth Circuit, to reverse the judgment in the above entitled cause by the District Court of the United States for the Biloxi Division of the Southern District of Mississippi.

Now, therefore, the condition of this obligation is such that if the above named Morris & Co. shall prosecute said writ of error to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

MORRIS & COMPANY,
Principal,
GARNER W. GREEN and
CHALMERS POTTER,
Surety.

The foregoing bond and surety approved this 23rd day of Nov. 1927.

E. R. HOLMES, Judge.

Filed Nov. 23, 1927.

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243 United States of America,
Southern District of Mississippi.

I, R. L. TODD, JR., Clerk of the District Court of the United States for the Southern District of Mississippi do hereby certify that the foregoing 244 pages contains a true and correct transcript of the record in the case of Morris & Company vs. Skandinavia Insurance Company, Ltd., as the same appears of record in my office at Biloxi, Mississippi.

Witness my hand and seal this December 3rd, 1927.

R. L. TODD, JR.,
(Seal) Clerk, U. S. District Court for the Southern District of Mississippi.

Writ of Error and Citation omitted from the printed record, the originals thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * * * *

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MORRIS AND COMPANY

versus

SKANDINAVIA FIRE INSURANCE COMPANY, LTD.

Whereas, the original record herein sent up had therefrom omitted the additional count filed by the plaintiff to recover, and the process executed thereon upon R. C. Wilkerson, Inc., and also the order allowing certain original documents to be sent to this Court from the Court below,

Now therefore, it is agreed by all parties that said omitted documents may be annexed hereto and forthwith transmitted as a supplemental record to the Clerk of the Circuit Court of Appeals, and that all of said omitted documents, save those to be presented in the original form, shall be printed and constitute a part of the record.

PALMER PILLANS,
PILLANS, CAWLEY & GRESHAM,
JAMES A. LEATHERS,
For Defendant in Error.

MAURICE GREEN,
JOHN M. LEE,
SID. MIZE,
CHALMERS POTTER,
GARNER W. GREEN,
For Plff. in Error.

2 In the District Court of the United States for the Southern Division of the Southern District of Mississippi.

Morris & Company, Plaintiff.

vs.

Skandinavia Insurance Company, Defendant.

Now comes the Plaintiff, Morris & Company, a corporation, organized and existing under the laws of the State of Louisiana, by its attorneys, and amends its declaration herein filed against the Skandinavia Insurance Company, a corporation, organized and existing under the laws of the Kingdom of Denmark, with its home office in the city of Copenhagen, and adds to said declaration a second count, in addition to the first count, which shall remain just as it now is, and for its other and further cause of action, says:

That, heretofore, upon May 23, 1919, the said Insurance Company became and was indebted unto the plaintiff in the sum of Fifty Thousand Dollars ($50,000.00) of United States Gold Money, and being then and there so indebted, did undertake and promise to pay to the said plaintiff, the said sum of $50,000.00 together with interest thereon at the rate of six per cent. per annum from and after said 23 day of May, 1919, until paid and although said plaintiff has often demanded payment of the said sum, so to plaintiff owing by said defendant, the said defendant has wholly failed and refused and still fails and refuses, to pay said sum.

3 Wherefore, plaintiff sues and demands judgment in the sum of $50 000.00 with six per cent. interest thereon from May 23, 1919, until paid.

JNO. M. LEE,
GREEN, GREEN & POTTER,
MIZE, MIZE & THOMPSON,
Attorneys for Plaintiff.

Filed March 29, 1927, B. L. Todd, Jr., Clerk.

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1 United States of America,
Southern Division of the Southern District of Mississippi.

The President of the United States,

To the Marshal of the Southern District of Mississippi: Greeting:

We command you, that without delay, you summon Skandinavia Insurance Company, Limited, a corporation organizesl and existing under the laws of the Kingdom of Denmark, defendant residing in the Western Division of said District and citizens of the Kingdom of Denmark that it be and appear at the District Court of the United States, to be held at the Court room thereof, in the City of Biloxi, Mississippi, in and for the Division of the Southern District of Mississippi on the fourth Monday of May next, to answer Morris & Company, a corporation organized and existing under the laws of the State of Louisiana, United States of America, plaintiff which is a citizen of the State of Louisiana of a plea of trespass on the case on insurance policy issued

to the plaintiff by defendant on, to-wit: July 11, 1918, for $50,000.00 for jerked beef of plaintiff to be carried on the vessel Normandy to Havana for the plaintiff as more fully set out in the declaration of plaintiff on file in the office of the Clerk of said District Court at Biloxi, Miss., hereby referred to. Damages claimed $50,000.00 with 6% interest from May 23, 1919, and that it do file its plea or defense in said Court on or before the said meeting thereof, or judgment will be given against it by default; and have you then and there this writ, and how you have executed the same.

Witness the Honorable E. R. Holmes, Judge of the District Court of the United States and the
5 seal of our said District Court this 4th day of April, 1927.

B. L. TODD, JR., Clerk,
By GEO. P. MONEY, Deputy Clerk.

The following is indorsed on the back of said summons:

Received this writ at Vicksburg, Miss., on the 16th day of April, 1927, and executed the same by handing a true copy hereof to R. C. Wilkerson, representative of the Skandinavia Insurance Co., at Vicksburg, Miss., on the 16th day of April, 1927.

A. P. RUSSELL, U. S. Marshal,
By KARL SCHNEIDER, Deputy.

6 In the District Court of the United States for the Southern District of Mississippi, Biloxi Division.

Morris & Company, a Corporation, Plaintiff,
vs. At Law No. 489.
The Skandinavia Insurance Company, Ltd., Corporation, Defendant.

This day by consent came on to be heard the application of the defendant, the Skandinavia Insurance Company, Ltd., under its special appearance, for an order for the safe keeping, transporting and return of those certain papers described as:

Tax statement or return of the Skandinavia Insurance Company from the 1st day of March, 1923, to the 31st day of December, 1923.

Tax statement or return of the Skandinavia Insurance Company from the 1st day of January, 1924, to the 31st day of December, 1924.

Tax statement or return of the Skandinavia Insurance Company from the 1st day of January, 1925, to the 31st day of December, 1925.

The annual statement of the Skandinavia Insurance Company for the year 1923.

The annual statement of the Skandinavia Insurance Company for the year 1924.

The annual statement of the Skandinavia Insurance Company for the year 1925.

to the Circuit Court of Appeals of the Fifth Circuit; and it is ordered that for the purpose of transmission that said papers be delivered to Palmer Pillans, and that

when and after they shall have been so used in
7 said Circuit Court of Appeals on the trial of the above entitled cause they be returned to this Court by said Pillans.

Ordered by consent this November 21, 1927.

E. B. HOLMES Judge

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8 In the District Court of the United States, Southern Division of the Southern District of Mississippi.

Morris & Company, Plaintiff,

vs.

Skandinavia Insurance Co., Defendant.

I, R. L. TODD, JR., Clerk, United States District Court for the Southern District of Mississippi, do hereby certify that the foregoing six pages contain a true and correct copy of the following original papers as set out in this certificate, as the same appear of record in my office at Biloxi, Mississippi, to-wit:

Certified copy of the additional count to the declaration.

Summons issued thereon and U. S. Marshal's return.

Certified copy of order of Court to forward original papers to U. S. Circuit Court of Appeals for the Fifth Circuit.

Witness my hand and seal of office hereunto affixed at Jackson, in said District, this February 4, 1928.

R. L. TODD, JR.,

(Seal) Clerk, U. S. District Court for the Southern District of Mississippi.

Minute entry of argument and submission April 9, 1928, omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 5229

MORRIS & COMPANY, Appellant,

versus

SKANDINAVIA INSURANCE COMPANY, LTD., Appellee

Appeal from the District Court of the United States for the Southern District of Mississippi

Before Walker, Bryan and Foster, Circuit Judges

John M. Lee, Sidney Mize, Marcellus Green, Garner W. Green (Chalmers Potter on the brief) for Appellant.

Palmer Pillans, James A. Leathers (Bigham, Englar & Jones; Pillans, Cowley & Gresham; Leathers & Sykes on the brief) for Appellee.

OPINION—Filed June 29, 1928

FOSTER, Circuit Judge:

In April, 1925, appellant, a Louisiana corporation, brought a suit at law in a state court to recover on a policy of marine insurance issued at Buenos Ayres by appellee, a corporation organized under the laws of Denmark, to cover a shipment of jerked beef from Montevideo to Havana, in May, 1918. Service of process was made on the Insurance Commissioner of Mississippi under the provisions of the Mississippi statutes. Later, another service was made on Robert E. Wilkerson, Inc. of Vicksburg, the nominal agent of appellee.

The suit was promptly removed to the district court and appellee filed a motion to quash the service and a plea to the jurisdiction, under the practice in Mississippi, both based on the following grounds: that both parties were non-

residents of Mississippi; that the contract was executed and to be performed out of Mississippi; and that appellee was not doing business in Mississippi.

At the time this suit was filed another suit was pending between the same parties on the same cause of action in New York where appellee has a resident agent. With full reservation of its rights under the motion to quash and plea to the jurisdiction, appellee filed a plea of lis pendens. The suit in New York was dismissed before a hearing in this cause, on which hearing the motion to quash and the plea to the jurisdiction were sustained, a verdict was directed in favor of appellee and the suit was dismissed. Error is assigned to the action of the court in dismissing the suit.

The record shows conclusively the following state of facts. Appellee does only a re-insurance business in the United States and all of this is transacted in New York City, the transactions being between appellee's agent and the original insurer. Appellee has re-insured risks on property situate in Mississippi and in compliance with the laws of Mississippi has appointed the Insurance Commissioner of Mississippi its agent for the purpose of service and has also appointed Wilkerson Inc. its nominal agent but that company has never had any transaction of re-insurance or otherwise for appellee, all business being negotiated and transacted in New York. Also in compliance with the Mississippi law appellee has filed annual statements of its re-insurance of risks on Mississippi property and paid an annual tax based thereon.

We think it is clear appellee was not doing business in Mississippi so as to be subject to suit in that state on a cause of action arising elsewhere. Old Wayne Life Assn. vs. McDonough, 204 U. S. 8; Simon vs. Southern Ry., 236 U. S. 115.

It may be conceded that if the statutes of Mississippi requiring appellee to appoint agents in Mississippi made service on those agents good as to a transitory cause of action arising elsewhere, appellee would be bound thereby, but we find nothing in the laws or jurisprudence of Mississippi going to that extent.

It is also contended by appellant that by removing the case to the district court; by appearing by counsel; and by

subsequently filing the plea of lis pendens, appellee has made a personal appearance and waived any defect of service. Citation of authorities is unnecessary to show that this contention is untenable.

We find no reversible error in the record.

Affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—June 29, 1928

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Mississippi, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the plaintiff in error, Morris & Company, and the sureties on the writ of error bond herein, Garner W. Green and Chalmers Potter, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 22, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified

copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 33,759. U. S. Circuit Court of Appeals, 5th Circuit. Term No. 450. Morris & Company et al., petitioners, vs. Skandinavia Insurance Company. Petition for writ of certiorari and exhibit thereto. Filed September 18th, 1928. File No. 33,759.